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THE

UNITED STATES

CONSTITUTIONAL MANUAL;

BEING

A COMPREHENSIVE COMPENDIUM

Of the System of Government of the Country;

PRESENTING A VIEW

OF THE GENERAL GOVERNMENT, IN ITS LEGISLATIVE, EXECUTIVE AND JUDICIAL DEPARTMENTS; AND OF THE GOVERNMENTS OF THE STATES, PARTICULARLY THAT OF PENNSYLVANIA, AND THEIR RELATIONS RESPECTIVELY TO THE UNION, AND TO EACH OTHER; WITH DEFINITIONS, CONSTRUCTIONS OF CONSTITUTIONAL PROVISIONS, AND EXPLANATIONS;

IN THE FORM OF QUESTIONS AND ANSWERS;

DESIGNED FOR ACADEMIES, SCHOOLS, AND READERS IN GENERAL.

BY MORDECAI M'KINNEY.

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PREFACE.

An acquaintance with the political instutions of our country is so important, that it can neither be trite to recommend it as interesting and valuable, nor superfluous to offer new aid for its attainment.

Where there is accuracy of information, on such a subject, the attempt ought not to be considered an unworthy one, if in its method it solicits attention, familiarizes useful knowledge, or is, in any way, adapted to the wants of society.

The writer would ask that the proposition, in reference to the general subject, contained in the title, and divisions and heads of the work, be considered in connection with its declared purpose and necessary limits. There is no pretention here to the character of a full and extended treatise. The plan and method were required, it is apprehended, in order to present perspicuously the matter furnished, in a form suited for easy reference by all; and as having, besides, the advantage of suggesting to the student or reader a systematic course for pursuing his inquiries on the subject. No one can be more inclined to recommend to all, having an opportunity of acquiring it, a thorough and complete knowlege of the government and constitutional law of our country, to be derived from the many able and profound expositions thereof that are extant.

It will be observed, that the view here given of our system of government is a practical one; exhibiting it as actually existing and in operation, rather than with respect to the theory of it, in the abstract; and showing its powers and duties, as constitutionally ascertained, and administered in practice, rather than the reasons therefor.

It is with this design, that the arrangement has been adopted, by which the general subject is treated of, not in the order of the text of the federal constitution, or of those of the States; but under divisions and heads appropriate to the real administration of our government and laws, and which allow of the introduction of a greater amount and variety of information in its natural place.

In our complex political system, consisting of a general government, and a number of separate State governments, acting in certain relations to it and to each other, the distinction between the general government and the State governments is of the greatest moment, often being the occasion of questions of much weight and delicacy. It has, therefore, been made an object especially to present this principle, with its relative bearings, throughout the work; and, it is thought, the arrangement by which the subject of the general government and that of the State governments are treated of separately, under distinct heads, is particularly suited to this end. The relations of the States to each other are, also, thus kept in view.

Besides what relates to constitutional provisions, or their construc-

tion, in a strict sense, there are embraced here such notices of Acts of Congress, the common and statute law of the States, and the ordinary civil officers, their duties and powers, as the nature of the subject would admit; with the endeavour to illustrate, to this extent, the principles and administration of our government and laws.

The book is designed to be a Manual, for popular use, and frequent and easy reference, on various topics of common and general interest; to which order of disposition is an essential requisite. This plan demanded the employment of numerous divisions, titles and heads; and it ought not, then, to be an objection, that, in some instances, there is a repetition of the same matter under different heads.

That there should be a general knowledge, in the community, for practical purposes, of our institutions and laws, lies at the very foundation of our government. Where the political rights of all the citizens are equal, and every one is enabled to exert an influence in the administration of public affairs; they should be well informed as to their rights and duties, and in regard to the powers conferred upon those whom they place in office. There is not so much weight to be attached to the existence of good forms of government, or just and beneficial laws, as to their application and execution; and many late events, in our country, most seriously force upon the mind the consideration, that the due administration of the government and laws depends in a great degree upon the co-operation of the people at large; and, of course, upon their intelligence and virtue.

It is only a proper understanding of our civil institutions that can induce strong and settled attachment to their principles, and impart ability for their maintenance; compared with which all other impulses or sentiments in regard to them are as nothing.

The propriety of inculcating this kind of information in the education of youth must be obvious. It is the writer's impression that the works published especially for this purpose have been either too technical and abstract; or, in many instances, too simple. He conceives that there have been mistakes made, in forming too low an estimate of the capacity of youth to comprehend, and their disposition to be interested in such studies.

It seems that there are but wanting facilities of the right kind in order to secure the most useful attention to these subjects, among all classes of the community.

An eminent jurist, and author on constitutional law, has observed: "Constitutions are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them; the people adopt them; the people must be supposed to read them, with the help of common sense; and cannot be presumed to admit in them any recondite meaning, or any extraordinary gloss."

Harrisburg, June 8th, 1845.

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CHAPTER X.—*Militia.*

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1.

All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State, shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned, among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner

as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election, to fill such vacancies.

5. The House of Representatives shall choose their Speaker, and other officers, and shall have the sole power of impeachment.

Section 3.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State, by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

Section 5.

1. Each House shall be the judge of the election, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of the absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two Houses shall be sitting.

Section 6.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either House, during his continuance in office.

Section 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment,) shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places, purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

18. To make all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Section 9.

1. The migration or importation of such persons, as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, or invasion, the public safety may require it.

3. No bill of attainder, or *ex post facto* law shall be passed.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties, in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person, holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State.

Section 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of the Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Section 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot, for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest

number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more, who have equal votes, the Senate shall choose from them, by ballot, the Vice President. [*This clause altered and supplied by the* XII*th Amendment.*]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. [*So also as to the Vice President. See* XII*th. Amendment.*]

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm,) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.

Section 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States,

when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present, concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Section 3.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Section 1.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitntion, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Section 1.

Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime,

who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Section 3.

1. New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States or of any particular State.

Section 4.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress: *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution, between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

John Langdon,
Nicholas Gilmam.
Massachusetts.
Nathaniel Gorhan,
Rufus King.
Connecticut.
Wm. Sam'l Johnson.
Roger Sherman.
New York.
Alexander Hamilton.
New Jersey.
William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.
Pennsylvania.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thos. Fitzsimmons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.
Delaware.
George Read,
Gunning Bedford, Jr.
John Dickinson,
Richard Bassett,
Jacob Broom.
Maryland.
James M'Henry,
Dan'l St. Tho. Jenifer
Maryland.
Daniel Carroll.
Virginia.
John Blair,
James Madison, jun.
North Carolina.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
South Carolina.
John Rutledge,
C. Cotesworth Pinkney,
Charles Pinkney,
Pierce Butler.
Georgia.
William Few,
Abraham Baldwin.

Attest—WILLIAM JACKSON, *Secretary*,

AMENDMENTS.

The following articles proposed by Congress, in addition to, and amendment of the Constitution of the United States, having been ratified by the legislatures of two-thirds of the States, are become a part of the constitution.

ARTICLE I.

(First Congress. First Session. March 4, 1789.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

(Third Congress. Second Session. December 2d, 1793.)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

(Eighth Congress. First Session. October 17th, 1803.)

The electors shall meet in their respective States, and vote by ballot, for President and Vice President; one of whom at least shall not be an inhabitant of the same State with themselves; they shall name in

their ballots, the person voted for as President, and in distinct ballots, the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed. And if no person have such a majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice; and if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

THE UNITED STATES
CONSTITUTIONAL MANUAL.

15

THE UNITED STATES

CONSTITUTIONAL MANUAL.

PART THE FIRST.

Of the Government of the United States of America.

CHAPTER I.

OF THE GOVERNMENT OF THE UNITED STATES, IN GENERAL

1. How many simple forms of government are there?
Three, monarchy, aristocracy and democracy.

2. What is monarchy?
It is the government of one chief magistrate, under whatever title, as king, emperor, czar, or sultan.

3. Are there different kinds of monarchy?
Monarchy may be *despotic*, where the chief magistrate has absolute power, and rules by his simple will and pleasure; or it may be *limited*, by the monarch being obliged to rule in conformity to a fixed constitution of government and established laws, and where he is controlled by some other power in the state.

4. What is aristocracy?
Aristocracy is the government of an order of nobility, the chief men, or a select number of persons in the State. Where the government is in the hands of very few persons it is called oligarchy.

5. What is democracy?
It is the government of the people.

6. Are not these forms of government often united and mixed?
Yes.

7. What is a republican government?

A government in which the people rule through their representatives.

8. What is the form of government of this country?

The United States of America are a federal republic; [a] formed by all the people of the United States in their original and aggregate capacity; with a general government of limited powers, for national purposes, operating upon the individual citizens; the several States having separate republican governments for the regulation of their internal affairs respectively, in accordance with the constitution of the Union.

Under the system of government of this country, the supreme powers of government are divided, between the government of the United States and the governments of the individual States. The former, created by the federal constitution, is a government, in the proper sense of the term, within the sphere of its powers, as the latter, created by the constitutions of the States, are governments, within their several spheres; the one thus operating in all the States, and the others separately in each State; and there being a concurrent operation in certain cases.

9. When did the United States become independent?

The original States, formerly colonies of Great Britain, became free and independent by their Declaration of Independence, on the fourth day of July 1776, the birth day of our national independence.

The *declaration*, not the *recognition* of our independence has universally been regarded as our national era.

10. How was the declaration of independence made?

By the Congress of Delegates of the united colonies. The Congress was composed of delegates appointed by the people of the colonies, in their primary and sovereign capacity.

"The declaration of the independence of all the colonies was the united act of all. It was a declaration by the representatives of the United States of America in Congress asssembled;"—"by the delegates appointed by the good people of the colonies." It was not an act done by the State governments then organized, nor by persons chosen by them. It was emphatically the act of the whole people of the united colonies, by the instrumentality of their representatives, chosen for that, among other purposes. It was an act of original, inherent sovereignty by the people themselves, resulting from their right to change the form of government, and to institute a new government, whenever necessary for their safety and happiness. No State had presumed of itself to form a new government, or to provide for the exigencies of the times, without consulting the Congress on the subject; and when they acted, it was in pursuance of the recom-

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[a] See explanation of these terms, further on, p. 22.

mendation of Congress. It was therefore the achievement of the whole, for the benefit of the whole. The declaration of independence has accordingly always been treated as an act of paramount and sovereign authority, complete and perfect in itself, and by its own act working an entire dissolution of all political connexion with and allegience to Great Britain. And this, not merely as a practical fact, but in a legal and constitutional view of the matter by courts of justice." *b*

11. What was the nature of the governments of the colonies, prior to the American Revolution?

The colonies were dependencies of Great Britain, owing allegiance thereto; and they had governments, in respect to their local and interior affairs, organized, and exercising power, in accordance with the grants, commissions, and charters issued by the British king.

There were three forms of colonial government; viz, Provincial, Proprietary, and Charter Governments.

First, the Provincial Governments were those established by the grants or commissions of the king, in which the whole political and civil power was to be exercised under his immediate authority and control. Under them there was a Governor of the Province, appointed by the King, as his representative or deputy, and to be governed by instructions; and also a council, appointed in the same manner, who, besides their legislative authority, were to assist the governor in the discharge of his official duties. Provincial Assemblies were constituted, composed of the Governor, council, and the representatives of the freeholders, which had the power of making local laws and ordinances, subject to the ratification or disapproval of the crown. The governor had power, with the advice of the council, to establish courts, to appoint judges, magistrates, and other officers, for the province; to pardon offences, and remit fines and forfeitures; to raise military forces for defence; and to execute martial law in time of invasion, war and rebellion. Appeals lay to the king in council from the decisions of the highest court of judicature of the province, as indeed they did from all others of the colonies.

This form of government existed in the provinces of New-Hampshire, New-York, New-Jersey, Virginia, the Carolinas, and Georgia.

Secondly, Proprietary Governments were those, under which the right of territory and jurisdiction was granted, by the king to one or more individuals, as proprietaries, subject to the sovereignty of the mother country. In these governments there were governors appointed by the proprietaries, and legislative assemblies were convened under their authority.

There existed three Proprietary governments at the period of the American revolution; viz, those of Maryland, Pennsylvania, and Delaware.

Thirdly, Charter Governments were those, established by the

b 1 Story on the Cons. p. 198.

charters of the king, and under which the colonies possessed the general powers of government, including the powers of legislation and taxation, within their own territorial limits; though dependent upon, and subject to the realm of England.

The Charter Governments existed in Massachusetts, Rhode-Island and Connecticut.

In Massachusetts, the governor was appointed by the king; the council chosen by the General Assembly; and the House of Representatives by the people. In Connecticut and Rhode-Island the governor, council and assembly where chosen by the freemen of the colony, and all other officers appointed by their authority.

The following principles and circumstances were, notwithstanding the diversities of their organization of government, common to all the colonies.

(1.) They enjoyed the rights and privileges of British born subjects, and the benefit of the common law of England; and all their laws were required to be not repugnant to, but, as near as might be, agreeable to the laws and statutes of England.

(2.) In all the colonies local legislatures were established, one branch of which consisted of representatives of the people freely chosen.

(3.) The colonies were considered, not as parcel of the realm of Great Britain, but as dependencies of the British crown, and owing allegience thereto, the king being their supreme and sovereign lord.

(4.) The colonies had no direct political connection with each other. Each was independent of all the others; and each, in a limited sense, was sovereign within its own territory. There was neither alliance nor confederacy between them.

(5.) Though the colonies were independent of each other in relation to their domestic concerns, they were not wholly alien to each other. They were fellow subjects, and for many purposes one people. Every colonist had a right to inhabit, if he pleased, every other colony; and as a British subject, he was capable of inheriting lands by descent in every other colony. The commercial intercourse of the colonies, too, was regulated by the general laws of the British empire; and could not be restrained, or obstructed by colonial legislation.

12. What system of general government had the united colonies at first, preparatory to, and at the commencement of the American revolution?

A national or general government, organized by the representatives of the people, the authority of which was exercised by the Congress of Delegates, or Continental Congress. It was called the "revolutionary government." The first Congress assembled in 1774; and this government continued until the formation of the confederated government in 1781.

"The Congress thus assembled, (in 1774) exercised *de facto*, and *de jure* a sovereign authority; not as the delegated agents of the

governments of the colonies, but in virtue of original powers derived from the people.

"Thus was organized under the auspices, and with the consent of the people, acting directly in their primary and sovereign capacity, and without the intervention of the functionaries to whom the ordinary powers of government were delegated in the colonies, the first general or national government, which has been very aptly called "the revolutionary government," since in its origin and progress it was wholly conducted on revolutionary principles.

"As soon as the continental Congress assumed powers and passed measures, which were in their nature national, to that extent the people, from whose acquiescence and consent they took effect, must be considered as agreeing to form a nation.

"From the moment of the declaration of independence, if not for most purposes at an antecedent period, the united colonies must be considered as a nation *de facto*, having a general government over it, created, and acting by the general consent of the people of the colonies.

"It was the result of an examination before the Supreme Court of the United States, that the congress, before the confederation, possessed, by the consent of the people of the United States, sovereign and supreme powers for national purposes."*c*

13. What system of general government was next adopted by the united States?

After the declaration of independence, there was formed a confederation of the States, under the "Articles of Confederation."

These were adopted by the Congress of Delegates in November, 1777, and finally ratified, so as to become obligatory upon all the States, in March 1781.

14. What was the nature, in general, of that confederation?

It was a union of the States, declared to be perpetual, "for the common defence and general welfare;" but it was in effect only a league between the States as independent communities, acting upon their governments severally, by the terms of which the authority of their Congress of Representatives was binding upon them, but without any provision for enforcing its requisitions, or adding any sanction to its laws.

15. Did the confederation of the States answer the purposes designed by it?

It was found, after the termination of the revolutionary war, to be too weak for the ends of a national government.

16. How was the present government of the United States formed?

By the agreement of the people, expressed in conventions of their

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c 1 Story on the Cons. p. 186, 200, 207.

representatives, whereby they adopted a written constitution for the government of the United States as a nation. See chapter II.

17. What is the nature, in general, of the authority of the government of the United States?

The authority of the government of the United States proceeds from and acts upon the people as individual citizens thereof.

18. What is the fundamental principle of our government?

The sovereignty or supreme power of the people; or the right of the people to make laws to govern themselves.

19. What is the principle of representation?

It is one of the leading principles in our general government, and in those of the States severally, by which the people exercise their supreme power through their representatives or delegates.

20. Why is the government of the United States called a *federal* republic?

Because that in our political system there are several republican States, having separate and independent governments for local purposes, which have particular relations to the general government and to each other, according to the constitution of the Union.

21. What is the *federal* Constitution?

The Constitution of the United States.

22. What is the *federal* government, as so called?

The government of the United States as distinct from the government of any particular State.

23. What is the general government?

The government of the United States, in all its departments, legislative, executive and judicial. It is also called the national government.

24. Is the Union completely sovereign, having supreme power for all purposes?

No; it is not completely sovereign; but it is sovereign in the exercise of the powers granted to it by the federal constitution.

25. What is the extent, in general, of the powers of the general government?

The general government is possessed of only limited powers, as granted by the people of the United States in the federal Constitution, for national purposes *only;* all other matters being under the control of the State governments, or of the people of the States severally, except where it is prohibited by the federal constitution.

26. Is any of the particular States sovereign?

No single state is completely sovereign, or independent of the Union; but every State is sovereign in the exercise of its powers, consistently with the provisions of the federal constitution.

27. What are declared in the federal constitution to be the objects for which it was established?

"In order to form a more perfect Union; to establish justice, to insure domestic tranquility; to provide for the common defence; to promote the general welfare; and to secure the blessings of liberty to ourselves and posterity." *Cons. of U. S. Preamble.*

28. Are the laws of the United States supreme?

"The constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." *Cons. of U. S. Art.* VI. *sect.* II.

29. What is, then, the nature of the general government, in its relations to the several States, and the people of the Union?

It extends over the Union, as one national community or body politic; composed, not only of the people of the States, but to a certain degree of the States themselves, for the purpose of investing the States, as well as the people, with one national character.*d*

30. Is the Union between the people of the several States, thus formed by the federal constitution, intended to be perpetual?

Yes. As the government of the Union is the government of the people, it cannot be abolished or abrogated, except by their consent.

31. Has any State then, or the people thereof, a right to recede from the Union, or to dissolve the relations subsisting between it and them?

No.

32. Do the people, thus, owe allegiance and obedience to both the general government and the States respectively in which they reside?

Yes.

33. How may the subject of the government of the United States be properly considered, in the view proposed to be here taken of it?

I. With regard to the particular structure and organization of the government.

II. In relation to the powers vested in it; and the restraints imposed upon, and the rights secured to, the several States.

34. What are meant by the "powers of the general government?"

The powers vested, by the federal constitution, in the general government, or any department of it, or thus exercised in pursuance thereof.

The powers of the general government, being distributed amongst its different departments, embrace the powers which may be constitutionally exercised either by any one department, or by all the

d Duer's Constitutional Jurisprudence, p. 219. See Part the Second, of this work, chap. i.

departments together. A power possessed by any one department must be included in the general powers of the government; it cannot exercise a power not comprehended therein.

The rules of construction which are applicable to the powers of the general government, are proper, also, in regard to the powers of any particular department of it.

35. How may the powers conferred by the federal constitution on the general government be classed?

The powers granted by the federal constitution are called; the *enumerated powers*, being the substantive and primary powers expressly specified; the *incidental powers*, being secondary and subordinate powers necessary as means for executing or carrying into effect those enumerated powers: And these two classes include all the powers conferred upon the general government, as there is an implied prohibition of all other powers. In the federal constitution the grant of powers is special, the prohibition of them general. There is also a class of powers in the federal constitution called, *powers prohibited to the general government;* another class called *powers prohibited to the States severally;* and another class called, *concurrent powers*, or those which from their nature, or the language of the constitution, may be exercised concurrently by the general government and the State governments. *e*

36. Are the powers of the general government either *exclusive* or *concurrent*? *f*

Yes.

37. Are there provisions, in the federal constitution, which may be classed as those which expressly secure certain rights and privileges to the several States, and the citizens thereof?

Yes. *g*

38. What are called powers *reserved* to the States severally, or to the people?

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S. Amendments, Art. X. g*

39. What may be called the *declared general principles and rights*, in the federal constitution?

Certain general principles and provisions, contained in the federal constitution, which are restrictive of the powers of government, and declaratory of the rights of the several States and the people. *h*

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e See, further on, the titles "Congress of the United States," chap. iii; "Powers prohibited to Congress and the federal government," chap. iv; and "Powers prohibited to the States severally," chap. v.

f See, chap. ii. q. 10.

g See Part the First, chap. vi.

h See Part the First, chap. vi.; and as to the Declarations or Bills of Rights in the several States, see Part the Second, chap. ii.

40. What are the general provisions, in the federal constitution, as to the delegation of powers to the general government?

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S. Amendments, Art.* X.

"The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people." *Cons. of U. S. Amendments, Art.* IX.

41. Are the *incidental* powers included in the express or enumerated powers, and equally *delegated* with them, by the federal constitution, to the general government?

Yes.

42. What is the authority of the federal constitution, and the acts of Congress; and the constitutions of the several States, and the laws thereof, respectively; in relation to each other?

They are authoritative and binding, in the following order; first, and paramount over all, the federal constitution; secondly, treaties and acts of Congress; thirdly, State constitutions; and fourthly, acts of the State Legislatures or laws of the States severally; and in case of conflict, they must yield respectively to each other accordingly.

43. Are all federal and State officers required to be sworn or affirmed to support the constitution of United States?

"The Senators and Representatives of the United States, the members of the State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this constitution." *Cons. of U. S. Art.* VI. 3.

44. Are the powers of the general government which are delegated to it by the federal constitution, distributed among several distinct departments of government?

Yes.

45. What are the different departments of the general government?

The *legislative*, *executive*, and *judicial*; the federal constitution specially defining the general powers and duties of each department.

46. Is the just distribution of the delegated powers of government among distinct branches or departments of it, properly organized, essential to the best system of republican government?

Yes. Where the powers of government are all vested in the same hands, it is an absolute government, or despotism, in which there is no security against the abuse of power.

47. How is the *legislative department*, of the general government, organized?

The legislative power, of the general government, is vested in a Congress of the United States, composed of a Senate and a House

of Representatives; both chosen periodically, the former by the States severally, the latter by the people. *i*

48. How is the *executive department*, of the general government, organized?

The executive power, of the general government, is vested in a President of the United States, elected, with a Vice-President, for a term of years, in a mode and upon a principle which in effect combine the suffrages of the people with those of the several States. *j*

49. How is the judicial department, of the general government, organized?

The judicial power is vested in a Supreme Court, and in such inferior courts as Congress may from time to time establish; the judges holding their offices for life, unless sooner removed on conviction of misbehavior. *k*

50. Are these departments co-ordinate branches, of the general government, with separate powers, acting independently of each other in the exercise of their peculiar powers respectively?

Yes.

51. Are these departments so organized, and connected with each other, by their mutual relations, and the apportionment of the powers of government among them, as that each one may be a constitutional check upon the others, and the means of keeping them within their proper spheres?

Yes.

52. Has the judicial department the power, in the due administration of justice, according to its jurisdiction, of interpreting the federal constitution, and of deciding upon the validity of the acts of the other branches of the general government?

Yes.

53. Is each of these departments, of the general government, in the exercise of its proper powers, the representative of the people, as the source of its authority, and as having the supreme power?

Yes.

54. Are the several States represented in the general government?

The principle of representation is applied, in the constitution, not only to the individual citizens of the United States, but to the individual States of the Union; and it pervades the three great departments, among which the powers of government are distributed and apportioned. *l*

55. What does the term "The United States" mean, in regard to extent of territory and jurisdiction?

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i See Part the First, chap. iii.
j See Part the First, chap. viii.
k See Part the First, chap. ix.
l Duer's Constitutional Jurisprudence, p. 34.

The whole of the nation. It is the name given to our great republic, which is composed of States and territories.

Territorial governments.

56. What are the territorial governments of the United States?

Governments of the territories belonging to the United States, and not lying within the limits of any State.

57. What is the nature of those governments?

They are created by Act of Congress, and are dependent upon the general government. *m*

Citizens of the United States.

58. Who are citizens of the United States?

Citizens, under our constitutions and laws, mean the free inhabitants born within the United States, or naturalized under the laws of Congress. *n*

59. How may the inhabitants of this country be divided in respect to citizenship?

As generally classed, they are citizens or aliens; and citizens are native or naturalized.

60. Who are *native* citizens?

Natives are all persons born within the jurisdiction of the United States.

61. How are free colored persons, born within the United States, to be considered?

"As citizens, but under such disabilities as the laws of the States respectively may deem it expedient to prescribe to free persons of color." *o*

62. What is the provision of the federal constitution as to the rights of the citizens of each State in the several States?

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Cons. of the U. S. Art. IV. sect. II.

63. Is every person born within the United States a citizen, owing allegiance to the government thereof?

Yes.

64. Are the children of citizens born abroad considered, by law, as citizens of the United States?

Yes; when their parents have at some time resided here.

65. Are there persons held as slaves, in this country, under the laws thereof?

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m See title Congress of the United States, chap. iii.

n 2 Kent's Commentaries on American Law, p. 258, in notes. As to the naturalization of aliens, see chap. iii, head "Powers of Congress."

o 2 Kent's Commentaries on American Law, p. 258, in notes. And see Part ii. chap. ii, head "Relations of persons."

In some of the States, there are, under the laws thereof, colored persons or negroes, imported before the year 1808, or their descendants born therein, who are held by individuals as slaves; the federal constitution recognizing the condition of such slaves, in the States, and containing certain provisions in relation to them.[p] There are, also, slaves held as property by individuals in the District of Columbia, and in some of the Territories of the United States.

66. Who are *aliens?*

Aliens are persons born out of the jurisdiction of the United States.

67. How are aliens divided?

Into alien friends and alien enemies.

68. Who are alien enemies?

Aliens whose country is at war with ours.

69. How are alien enemies, residing here, considered?

They are, by the general law, considered as enemies, and their persons and property liable to be seized and confiscated. Any evils or injustice, however, that might follow from this principle, on a declaration of war, are prevented by the interference of the government, or the laws of Congress.

70. Are aliens, while residing in this country, subject to the general laws of the United States, and of the States severally, and entitled to the protection thereof?

Yes.

71. What are the disabilities of aliens in this country?

They cannot hold offices, vote at elections, act as jurors, nor, generally, perform any service connected with the administration of the civil affairs of the country.

72. Can aliens hold property in this country?

In regard to personal property, their legal capacities are, in general, the same as those of citizens. In some of the States they cannot hold real estate; or the right to do so is limited by the laws thereof respectively.

73. May aliens become citizens of the United States?

Resident aliens may become citizens, on certain conditions, and in the manner prescribed by the Acts of Congress.[q] They are then called *naturalized* citizens.

74. Have naturalized citizens the same political and civil rights which native citizens enjoy?

Yes, in general. Naturalized citizens are not eligible to some offices, and a prescribed term of citizenship is requisite as a qualification for others. A naturalized citizen is not eligible to the office of President, or Vice President, of the United States.

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[p] See Part the First, chap. v. heads 'Fugitives from labor,' and chap. iv, head "Importation of Slaves," and chap. iii. quest. 37,38.

[q] See Part i. chap. iii. q. 125.

CHAPTER II.

OF THE CONSTITUTION OF THE UNITED STATES.

Its adoption, and its nature.

1. What is a constitution, in its legal and political sense?

A constitution is a written declaration of the sovereign will of the people in relation to the form and powers of government.

This is the definition of a constitution, in reference to the subject under consideration, and as the term is generally used in America. Properly, that is a constitutional government which is administered according to established principles and rules, and which is the result of general consent either actually expressed or fairly implied. A constitution, in this sense, signifies the fundamental principles on which a government is formed. It may exist in a monarchy, aristocracy, democracy, or mixed form of government; and it may be derived from custom, tradition, or the acts and proceedings of the government itself, as well as from a written compact.

A constitution of a country or nation is its fundamental law, supreme, perpetual.

2. What is constitutional law?

Constitutional law is that branch of jurisprudence, which treats of the fundamental principles on which a government is formed; of the practical exercise of the powers of government in conformity with them; and of the construction to be given to them in their application.

3. What provision is there in the federal constitution in regard to its ratification?

"The ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same." *Art.* VII.

4. When was the constitution of the United States formed and adopted?

The plan of the constitution was adopted by a convention of delegates, appointed by the legislatures of all the original States, except Rhode Island, on the 17th day of September, 1787; and in the course of about a year thereafter it was ratified and adopted by conventions of delegates, chosen in each of the States by the people thereof.

The constitution was ratified by the conventions of delegates in nine of the States, before the 13th of September 1789, being thereby established between those States; and it was adopted by North

Carolina, in its convention, in November, 1789, and by Rhode Island, in May, 1790, after the constitution had gone into operation.

5. What is the constitution of United States?

It is the written declaration of all the people of the United States, in their original and sovereign capacity, ordaining and establishing a national government, and defining its form and powers.

It is a constitution of government, by the people. It is an act of the people, and not of the States in their political capacities. "It is an ordinance or establishment of government, originating in the consent of the people; and it binds as a fundamental law promulgated by the sovereign authority, and not as a compact or treaty entered into, and to exist, between each and all the citizens of the United States, as distinct parties." *r*

"The constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by the people of the United States." *s*

6. Is the federal constitution to be regarded as the result of concession and compromise?

Yes. It was the act of the people of the original States, voluntarily uniting, through mutual concession and compromise in relation to various local interests and other matters, in establishing a government for the Union. And such is it, always, to be considered, in its nature, as to its obligation upon the people, and their allegiance to it.

This variety of interests arose from, principally, the actual difference in the extent and situation of the territories of the several States, the number of their inhabitants, their agricultural productions, the existence of slavery in some of the States, and their peculiar laws and institutions.

7. When did the constitution of the United States go into operation?

On the fourth day of March, 1789; when Congress assembled under the new constitution, and commenced proceedings under it.

On the 30th of April 1789, the first President of the United States, George Washington, took the oath of office, and the government then went into operation, in all its departments.

8. How may the provisions of the constitution of the United States be, in general, divided?

First, into those which provide for the particular structure and organization of the government; and, secondly, into those which define the nature, extent and limitation of the powers vested in the general government, impose certain restrictions upon the several States, and reserve and secure certain rights to the several States and to the people.

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r 1 Story on the Cons. p. 446.

s Opinion of the Supreme Court of the U. S., 1 Wharton's Reports, p. 305, 324.

They may also, be more particularly classed under four heads; first, those which relate to the organization of the legislative department; secondly, those which relate to the organization of the executive department; thirdly, those which relate to the organization of the judicial department; and fourthly, those which define and limit the powers delegated and the rights secured or reserved.

9. Of what authority is the constitution of the United States?

It is the supreme law of the land.

It is obligatory upon the general government, in all its departments; upon the several State governments, in all their departments; and upon the whole people. Every act of Congress, or measure or proceeding of any department of the general government; every part of of a constitution, law or act of a State, its government or people; which is repugnant to any of the provisions of the constitution, is null and void.

Constitutional questions, how determined.

10. By whom are the provisions of the constitution of the United States to be interpreted, and their meaning and obligation finally determined?

By the courts of the United States, on all questions capable of judicial inquiry and decision, in the regular administration of justice. The determination of the Supreme Court of the United States, in such cases, is final and conclusive. *t*

As the constitution, and the laws of the United States made in pursuance of it, and all treaties made under the authority of the Union, are declared to be the "supreme law of the land;" and the judges in every State are bound thereby; "any thing in the constitution or laws of any State to the contrary notwithstanding;" as every act of Congress, or of the State Legislatures, and every part of the constitution of any State, which is repugnant to the federal constitution, is null and void; and as the judicial power extends to all cases in law or equity arising under the constitution, laws, and treaties of the United States; it necessarily belongs to that power, whenever a case judicially arises, to determine what is the supreme law of the land; and the determination of the Supreme Court of the United States must be final and conclusive, because the constitution gives to that tribunal power to decide in every such case, and gives no appeal from its decision.

Courts of justice have a right to pronounce, in cases under their jurisdiction, legislative acts to be void.

The Courts of Justice were intended, as a separate and co-ordinate department of the government, to act as an intermediate body between the people and the legislature, in order, amongst other things, to keep the latter within the limits assigned to its authority. *u*

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t See part the first, Chapt. x.

u Duer's Constitutional Jurisprudence, p. 357.

It is the proper function of the judicial department to interpret laws, and by the very terms of the constitution to interpret the supreme law. Its interpretation, then, becomes obligatory and conclusive upon all the departments of the general government, and upon the whole people, so far as their rights and duties are derived from, or affected by that constitution. *v*

Judicial decisions of the highest tribunal, by the course of the common law, are considered as establishing the true construction of the laws, which are brought into controversy before it. The particular case is not alone considered as decided and settled; but the principles of the decision are held as precedents and authority, to bind future cases of the same nature. This is the constant practice under our whole system of jurisprudence. The general principle must have been in the view of the framers of the constitution; and is applicable to the decisions of the Supreme Court of the United States, on questions arising under the constitution.

Whenever the officers of any department of the government are required to act in a case, not hitherto settled by any proper authority, they must, in the first instance, decide, each for himself, whether or not the act can be done consistently with the constitution. Such acts may become the subjects of judicial examination, and their validity, in reference to the constitution, be thus determined. But there are cases, in which the decisions of the legislative and executive departments, thus made, must be final and conclusive, being from their very nature and character incapable of revision.

The judicial department has, in fact, constantly exercised this right of interpretation in the last result; and its whole course of reasonings and operations has proceeded upon the ground, that, once made, the interpretation was conclusive, as well upon the States, as the people. *w*

No State has a right, for itself, to abrogate or *annul* a law of Congress, on the ground of its being deemed by the State unconstitutional.

Rules of interpretation.

11. What are some of the most important rules of interpretation applicable to the constitution?

I. It is to be construed as a *frame*, or fundamental law, of government, established by the people of the United States, according to their own free pleasure and sovereign will.

"It is to receive as favorable a construction as the constitutions of the States. Neither is to be construed alone, but each with reference to the other. Each belongs to the same system of government; each is limited in its powers; and within the scope of its powers each is supreme. Each, by the theory of our government, is essential to the existence and due preservation of the powers and obligations of the other."

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v 1 Story on the Constitution, p. 357.

w 1 Story on the Constitution, p. 345, 346, 349, 368.

II. The constitution of the United States is to receive a reasonable interpretation of its language and its powers, keeping in view the objects and purposes for which those powers were conferred.

In case the words are susceptible of two different senses, the one more strict, the other more enlarged, that should be adopted, which is most consonant with the apparent objects and intent of the constitution.

III. Where the power is granted in general terms, the power is to be construed as co-extensive with the terms, unless some clear restriction upon it is deducible from the context, either as expressly declared, or arising by necessary implication.

IV. No construction of a given power is to be allowed, which plainly defeats, or impairs its avowed objects.

V. In the interpretation of a power granted by the constitution, all the ordinary and appropriate means to execute it are to be deemed a part of the power itself.

VI. In the interpretation of the constitution, the existence of implied powers is to be admitted.

Every power which is the means of carrying into effect a given power, is implied from the very nature of the original grant. It is a necessary and unavoidable implication from the act of constituting a government, and vesting it with certain specified powers. *w*

VII. The powers granted by the constitution to the general government *exclusively*, exist in three cases; where the constitution has in express terms granted an exclusive power to the Union; where it has granted, in one instance, a power to the Union, and, in another, prohibited the States from exercising the like authority; and where it has granted an authority to the Union, to which a similar authority in the States would be absolutely and totally *contradictory and repugnant.*

There may be the exercise of power *concurrently* in the general government and the States, where, although it may be productive of occasional interferences in the policy of any branch of administration, it does not imply any direct contradiction or repugnancy in point of constitutional authority.

Unless from the nature of the power, or the obvious results of its operations, a repugnancy must exist, so as to lead to a necessary conclusion that the power is exclusive in the general government, the true rule of interpretation is, that the power is merely concurrent.

If a State passes a law clearly within its own constitutional powers, still if it conflicts with the exercise of a power given to Congress, to the extent of its interference its operation is suspended; for in a conflict of laws, that which is supreme must govern.

In regard to concurrent powers, there are cases in which the legislation of Congress suspends the legislative power of the States over the *subject matter;* and also cases, in which the State laws are

w See Part i. chap. iii. head "Duties and powers of Congress."

inoperative only to the extent of their actual conflict with the acts of Congress.

Wherever the power given to the general government requires that, in order to be efficacious and adequate to its end, it should be exclusive, there arises a just implication for deeming it exclusive. Whether exercised or not, in such a case makes no difference.

Wherever the power is not incompatible with a concurrent power in the States, either in its nature or exercise, there the power belongs to the States.

In such a case as the last mentioned, the concurrency of the power may admit of restrictions or qualifications in its nature, or its exercise. In its nature, when it is excluded in its application from objects or purposes, which would control, defeat, or destroy the powers of the general government. In its exercise, there is a restriction upon it to the extent of any actual conflict of the laws and regulations of the States made in pursuance of it with those of the general government.

VIII. Every word employed in the constitution is to be expounded in its plain, obvious and common sense, unless the context furnishes some ground to control, qualify or enlarge it.

IX. Where technical words are used, the technical meaning is to be applied to them, unless it be repelled by the context. Where the same word possesses a technical and common sense; the latter is to be preferred, unless attendant circumstances point clearly to the former.

It is not a correct rule of interpretation to construe the same word in the same sense, wherever it occurs in the constitution. The meaning is controlled by the context. The same word may bear different meanings; and the peculiar sense, in which it may be used in any sentence, is to be determined by the context.

X. That an affirmative provision in a particular case excludes the existence of a like provision in every other case; and that a negative provision in a particular case admits the existence of the same thing in every other case; are rules of interpretation to be applied to particular cases according to their nature and circumstances.

"The truth is, that in order to ascertain how far an affirmative or negative provision excludes, or implies others, we must look to the nature of the provision, the subject matter, the objects, and the scope of the instrument. These, and these only, can properly determine the rule of construction. There can be no doubt that an affirmative grant of powers in many cases will imply an exclusion of all others. In relation to such an instrument as a constitution, the natural and obvious sense of its provisions, apart from any technical or artificial rule, is the true criterion of construction." 1 Story on the Cons. 393-434. See Part I. chap. III. quest. 85, of this work.

Preamble of the Constitution.

12. What is the preamble of the constitution?

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this constitution for the United States of America."

It is the introductory paragraph of the constitution, setting forth the parties who established it, and the objects for which it was adopted.

It is an admitted maxim in the ordinary course of the administration of justice, that a preamble of a statute is a key to open the minds of the makers, as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statute. It is founded upon the universal principle of interpretation that the will and intention of the legislature is to be regarded and followed.

In a fundamental law, or constitution of government, great attention should be given to the intention of the framers as stated in the preamble. And accordingly we find, that the preamble of the constitution has been constantly referred to by statesmen and jurists, to aid them in the exposition of its provisions.

13. Can the preamble be resorted to, in order to enlarge the powers confided to the general government, or any of its departments?

No.

It cannot confer any power *per se*, in itself; it can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power; when otherwise withdrawn from the constitution. Its true office is to expound the nature, extent, and application of the powers actually conferred by the constitution; and not substantially to create them. For example, the preamble declares one object to be, "to promote the common defence." No one can doubt, that this does not enlarge the powers of Congress to pass any measures that they may deem useful for the common defence. But where the terms of a given power may admit of different constructions; if one would promote, and the other defeat the common defence, the former ought, on the soundest principles of interpretation, to be adopted. *x*

Amendments to the Constitution.

14. Does the constitution of the United States provide how amendments may be made to it?

"The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments; which, in either case, shall be valid, to all intents and purposes, as part of this constitution,

x 1 Story on the Cons. p. 445.

when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State shall, without its consent, be deprived of its equal suffrage in the Senate." *Cons. of U. S. Art.* V.

There have been twelve amendments incorporated, in the manner prescribed by the above provision, into the federal constitution, since its adoption. They are treated of, under the proper heads, in this work. See Part I. chap. V. VI. VII.

These amendments were made soon after the adoption of the constitution. Objections to it had been urged, on the ground that it contained no formal Bill or Declaration of Rights; *y* and on this account principally the amendments were adopted. The first ten amendments may be regarded as a Bill of Rights. There have been various other amendments, at different times, proposed by Congress, and considered by the Legislatures of the States; but they were not ratified by the requisite number of States.

It is a general principle of liberty that the people have the right to alter, reform or abolish their government, whenever they deem it necessary. *z*

It is one of the great excellencies of the federal constitution, that it provides in itself a mode for its amendment, in which such an object may be attained peaceably and readily, and yet not without proper care and deliberation.

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y See Part II. chap. iii. and Part I. chap. vii.

z See Part II. chap. iii. head "Supreme power of the people."

CHAPTER III.

OF THE CONGRESS OF THE UNITED STATES.

1. In whom is the legislative power of the general government vested, by the federal constitution?

By the federal constitution, all the legislative powers therein granted are vested in the Congress of the United States, consisting of the Senate and House of Representatives.

2. What is the legislative power of a government?

The power of making laws; and that branch of a government which has this power is the legislative department of it.

3. What is a legislature?

That body of persons which has the power of making laws for a State. Congress is the National Legislature.

4. Is the division of the legislature into two separate and independent branches a wise plan?

It is founded on the strongest reasons of policy, and its advantage has been proved by experience.

5 How do the two Houses of Congress act, in relation to each other, in making laws?

In their deliberations and proceedings for the passing of laws, they act separately and independantly, having co-ordinate powers; though the assent of both Houses is necessary to the final enactment of a law.

6. Is there a new Congress every second year?

The members of the House of Representatives and one third of the Senate being chosen every second year, there is a new Congress by the meeting of both Houses every second year. And the *Congress* for the time being is in fact dissolved, by the operation of the Constitution and laws, on the third day of March in every second year.

7. How many Congresses have there been since the organization of the general government, under the federal constitution?

The present Congress, in the year 1845, is the twenty-ninth.

SENATE OF THE UNITED STATES.

8. Of whom is the Senate of the United States composed?

The Senate of the United States is composed of two Senators from each State, chosen by the Legislature thereof for six years; and each Senator shall have one vote.

9. How are vacancies in the Senate of the United States to be filled?

"If vacancies in the Senate of the United States happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies." *Cons. of U. S. Art.* I. *sect.* III. 2.

10. Can a State, be deprived, without its consent, of its equal representation in the Senate of the United States, by an amendment of the federal constitution?

"No State, without its consent, shall be deprived of its equal suffrage in the Senate." *Cons. of U. S. Art.* V.

11. What is the executive of a State?

The person, (or body of persons), who has the power of executing or carrying into effect the laws of the State, and, in most cases, of making appointments to office; being generally the governor of the State.

12. Who may be Senators of the United States?

"No person shall be a Senator, who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen." *Cons. of U. S. Art.* I. *sect.* III. 3.

13. How are the Senators of the United States chosen by the Legislature of each State?

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators." *Cons. of U. S. Art.* I. *sect.* IV.

14. May Senators of the United States be elected either by the *joint* vote, or by the *concurrent vote* of the two Houses of the Legislature of a State?

It appears to be settled, that the Legislature of a State may prescribe either mode for electing its United States Senators. Both modes are used, in different States; though generally the choice of Senators is made by a concurrent vote.

On a joint vote, the members of both branches of the Legislature assemble together, and give a united vote numerically; on a concurrent vote, each branch gives a separate and independent vote.

The executive of a State has not the right of a negative upon such elections by the Legislature, as in cases where the State constitution gives him a qualified negative upon the laws.

15. Of how many members does the Senate of the United States at the present time, consist?

Of fifty-six members, representing the twenty eight States of the Union.

16. What voice, then, has each State in the Senate of the United States?

Each State has its equal voice and equal rights in the Senate of the United States, without regard to difference of population, wealth, or territory; and is represented therein as a sovereign and independent community.

17. How often are Senators of the United States elected?

Immediately upon the first election they were divided as directed by the federal constitution, into three classes, the seats of the first class to be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third of the Senate is chosen every second year.

18. What is the term of office of a Senator of the United States?

Six years.

19. When does the term of office of a Senator of the United States commence?

The regular term is six years from the fourth day of March after his election. Where a vacancy occurs, a Senator is elected or appointed for the unexpired period of the term.

20. Who is the President of the Senate of the United States?

"The Vice President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided." *Cons. of U. S. Art.* I. *sect.* III. 4.

21. When may the Senate choose a president *pro tempore*.

In the absence of the Vice President of the United States, or when he shall exercise the office of President. *Cons. of U. S. Art.* I. *sect.* III. 5.

22. Are Senators of the United States sometimes called *federal* Senators?

Yes.

Appointments to office.

23. What is the power of the Senate of the United States as to appointments to office?

The President of the United States,—"shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they may think proper, in the President alone, in the in the Courts of law, or in the heads of department." *Cons. of U. S. Art.* II. *sect.* II. 2. *a*

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a See Part i. chap. viii.

Impeachments.

24. What is the power of the Senate of the United States as to impeachments?

"The Senate shall have the sole power of trying all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States shall be tried, the Chief Justice of the United States shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present." *Cons. of U. S. Art.* I. *sect.* III. 6.

25. What is an impeachment?

A legal accusation, before a competent tribunal, against a public officer for a crime or misdemeanor, committed in the exercise of his office.

26. What officers may be impeached before the Senate of the United States?

"The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." *Cons. of U. S. Art.* II. *sect.* IV.

27. Who are meant by *civil* officers, in this provision of the constitution?

All public officers except military and naval, and members of Congress.

28. How may such an impeachment be preferred?

The House of Representatives has the sole power of impeachment, to be tried by the Senate. *Cons. of U. S. Art.* I. *sect.* II. 5.

29. What may be the judgment or punishment in case of conviction on any such impeachment?

"Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of trust or profit under the United States; but the party convicted shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law." *Cons. of U. S. Art* I. *sect.* III. 7.

Power as to treaties.

30. What is the power of the Senate of the United States as to treaties?

"The President of the United States States shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senate concur." *Cons. of U. S. Art.* II. *sect.* II. 2.

31. What is the authority of treaties so made?

"All treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding." *Cons. of U. S. Art.* VI. 2.

32. How are treaties with foreign countries generally negotiated and concluded?

Treaties with foreign countries, if made abroad, are negotiated on the part of the United States by ministers appointed by the President (with the advice and consent of the Senate) and who act under his instructions; and if made in this country, they are negotiated between the Secretary of State, under the like instructions, and ministers accredited from foreign Governments. When the terms of a treaty are agreed upon by the ministers, plenipotentiaries, or agents employed for that purpose, and approved by the President, he submits it to the Senate. The Senate acts upon it, separately and independently; the President not participating in their deliberations, but rendering them from time to time such information relative to it as they may require. The Senate may wholly approve or reject the treaty; or they may ratify a part; or they may recommend additional or explanatory articles, which, if the President approve, may become the subject of further negotiation with the foreign power; and when the whole is agreed to on the other part, and receives the sanction of the Senate, the ratifications are exchanged between the respective Governments, and the treaty becomes obligatory upon both nations.

OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

33. Of whom is the House of Representatives of the United States composed?

"The House of Representatives of the United States shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." *Cons. of U. S. Art.* I. *Sect.* II.

34. Are the members of this branch of the national legislature elected immediately by the people?

Yes.

35. How is the right of suffrage, in electing them, fixed by the federal constitution?

It is not uniform in all the States, upon a common principle; but is suited to the existing diversities in the several States, in regard to the qualifications of voters for members of their Legislatures respectively. *a*

36. Who may be a member of the House of Representatives of the United States?

"No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of

a See part ii. chapt. iv.

the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen." *Cons. of U. S. Art.* I. *Sect.* II. 2.

37. How are the Representatives to be apportioned among the several States?

"Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three fifths of all other persons." *Cons. of U. S. Art.* I. *Sect.* II. 3.

38. Are slaves computed in fixing the apportionment of Representatives?

By the federal constitution, three fifths of all slaves are to be computed in establishing the apportionment of the Representatives, and in the number which is to entitle any State to its proportion of Representatives.

39. Does the same rule which apportions Representatives apply to direct taxes?

Yes.

40. Is there any limit as to the number of the Representatives, in apportioning them?

"The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative." *Cons. of U. S. Art.* I. *Sect.* II. 3.

41. How often is there to be an apportionment of Representatives among the several States?

An enumeration, or census, of the inhabitants of the United States, as directed by act of Congress, is to be made every ten years, and a new apportionment had thereon, according to the relative population of the States. *Cons. of U. S. Art.* I. *Sect.* II. 3. The first enumeration was made in 1790.

42. How are Representatives in Congress elected?

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may make or alter such regulations, except as to the place of choosing Senators." *Cons. of U. S. Art.* I. *Sect.* IV. 1.

43. How are vacancies among the Representatives in Congress from any State to be filled?

The executive authority of the State shall issue writs of election to fill the vacancy. *Cons. of U. S. Art.* I. *Sect.* II. 4.

44. What has been the usual mode of electing Representatives in Congress?

Generally, after the apportionment of Representatives among the several States, by act of Congress, the Legislature of each State has prescribed the manner of electing the number of Representatives to which it was entitled, either by *general ticket* for the whole State, or by *districts*, each district electing one or more Representatives, according to its population, enumerated by the law of the State.

45. What is the mode of electing Representatives in Congress, at the present time, 1845?

By the Act of Congress, in 1842, making the last apportionment of Representatives among the several States, it was directed that the election of the Representatives in each State should be by *districts*, which is the present mode.

46. What is the number of Representatives in Congress, as fixed by the last apportionment made by Congress?

Two hundred and twenty-three. To this number, is now to be added the number of Representatives from the States of Florida and Iowa, admitted into the Union in 1845.

47. What is the present *ratio* on which the number of Representatives is apportioned among the several States?

One Representative to every 70,680 inhabitants, and one additional Representative for every remaining fraction exceeding the half of that ratio.*

48. What does the federal constitution provide as to the election of the officers of the House of Representatives?

"The House of Representatives shall choose their Speaker, and other officers." *Cons. of U. S. Art.* I. *Sect.* II. 5.

49. Is there a delegate to Congress from each territorial government of the United States?

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* The number of Representatives in Congress is divided, by the Act of Congress of 1842, as follows, viz:

New York, has	34	Illinois, has	7
Pennsylvania, "	24	Maryland, "	6
Ohio, "	21	New Jersey, "	5
Virginia, "	15	Missouri, "	5
Tennessee, "	11	New Hampshire,	4
Massachusetts, "	10	Connecticut, "	4
Kentucky, "	10	Vermont, "	4
Indiana, "	10	Mississippi, "	4
North Carolina,	9	Lousiana, "	4
Georgia, "	8	Michigan, "	3
Maine, "	7	Rhode Island, "	2
South Carolina,	7	Delaware, "	1
Alabama, "	7	Arkansas, "	1
			223

And the States of Florida and Iowa, admitted into the Union in 1845, are entitled each to one Representative in Congress.

There is a delegate chosen by the Legislature of each territorial government to the House of Representatives, who has the privilege of debating but not of voting.

50. Is the election of members of the House of Representatives of the United States held at the same time in all the States?

No; Congress not having fixed the time of holding such election, it is held at different times in the several States, agreeably to the laws thereof respectively.

Term of office.

51. What is the term of office of a Representative in Congress?

The term of every Representative expires with the third day of March of the second year of the Congress. In many of the States the Representatives are elected previously to the fourth day of March of the first year of every Congress, to serve for two years; but in some of the States, by the laws thereof respectively, they are elected subsequently to that day. In Pennsylvania, Representatives are elected to serve for two years, as has been stated. A person elected to supply a vacancy serves for the unexpired part of the term of the Representative, in whose place he was elected.

OF THE DUTIES, PRIVILEGES, AND POWERS OF CONGRESS.

Time of meeting.

52. When is Congress required to meet?

"The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day." *Cons. of U. S. Art.* I. *Sect.* IV. 2.

53. Has the President of the United States power to convene Congress, at any other time?

"The President may, on extraordinary occasions, convene both Houses of Congress, or either of them." *Cons. of U. S. Art.* II. *Sect.* III.

The first session of a new Congress cannot be held, nor its action commence, until the day fixed by the constitution or appointed by law, unless the President, in the exercise of his constitutional power, sooner convene it, on some extraordinary occasion. After being thus assembled, Congress may hold sessions, at any time, within its term, on its own adjournment, by the joint resolution of both Houses.

Adjournment of Congress.

54. How may Congress adjourn?

By the joint resolution of both Houses, at any time. The assent of the President thereto is not required.

55. To what time may Congress thus adjourn?

To any time not beyond the day of their annual meeting, as fixed by the constitution.

56. What is the power of either House as to adjournment?

"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." *Cons. of U. S. Art.* I. *Sect.* V. 4.

57. Can the President of the United States adjourn Congress, on any occasion?

In case of disagreement between the two Houses with respect to the time of adjournment, the President may adjourn them to such time as he shall think proper. *Cons. of U. S. Art.* II. *Sect.* III.

58. Can the President adjourn Congress to any period beyond the annual time of its meeting?

No.

Oath of office.

59. What is the oath of office of members of Congress?

They are bound by oath or affirmation to support the constitution of the United States. *Cons. of U. S. Art.* VI. 3.

Privilege from arrest.

60. What is the privilege of members of Congress as to arrest?

The Senators and Representatives "shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from the same." *Cons. of U. S. Art.* I. *Sect.* VI. 1.

61. What privilege have members of Congress in civil suits, at common law?

They are privileged from arrest, summons, citation, or other civil process, during their attendance on the public business confided to them. It has been so adjudged by the courts of justice. *b*

Freedom of debate.

62. What is the privilege of members of Congress as to any speech or debate in either House?

"For any speech or debate in either House they shall not be questioned in any other place." *Cons. of U. S. Art.* I. *Sect.* VI. 1.

Incompatibility of officers.

63. What is the provision of the federal constitution as to members of Congress holding offices under the authority of the United States?

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of

b 4 Dallas' Report, p. 107, 341.

either House during his continuance in office." *Cons. of U. S. Art.* I. *Sect.* VI. 2.

It is requisite that a member of Congress should resign his seat in Congress before he can be appointed to an office under the United States. And an officer under the United States must resign in order to be enabled to become a member of Congress.

64. Can members of Congress be, at the same time, members of the Legislature of any State?

It is generally provided by the constitution or laws of each State, that they cannot.

65. Can a member of Congress hold, at the same time, any civil office in a State?

It is generally provided by the constitution and laws of each State that no member of Congress, nor any person holding or exercising any office or appointment under the United States, shall at the same time hold any office in the State.

Compensation of members of Congress.

66. What is the provision of the federal constitution as to the compensation of members of Congress?

"The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States? *Cons. of the U. S. Art.* I. *Sect.* VI.

67. What is the compensation of members of Congress, at the present time, 1845?

By an act of Congress it is now eight dollars a day to each member while attending the session of Congress, and eight dollars for every mile of estimated distance, by the most usual road from his place of residence to the seat of government, at the commencement and end of every session of Congress; each member of the Senate to receive the same daily allowance and pay, for his attendance on and travelling to and from every meeting of the Senate in the recess of Congress. A member of Congress, in case of his sickness on his journey to or from the session of Congress, or of his being unable after his arrival to attend the same, is entitled to the same daily allowance. No member of Congress is allowed a sum exceeding the rate of eight dollars a day from the end of one session to the time of his taking his seat in the other. The President of the Senate *pro tempore*, and the Speaker of the House, receive each eight dollars for every day's attendance on their respective Houses, in addition to their compensation as members of Congress.

SEPARATE DUTIES AND POWERS OF EACH HOUSE.

Election and qualifications of members.

68. Is each House to be the judge of the election and qualification of its own members?

"Each House shall be the judge of the election, returns, and qualifications of its own members." *Cons. of U. S. Art.* I. *Sect.* V. 1.

Quorum.

69. What number of either House shall constitute a quorum, or a sufficient number to do business?

"A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide." *Cons. of U. S. Art.* I. *Sect.* V. 1.

This power is given to a minority of each House, in order that a portion of the members may not prevent the regular action of Congress, or suspend its legislation.

Election of Officers.

70. How are officers of each House elected?

The Vice President of the United States is president of the Senate, by virtue of his office; as to all other officers, each House elects or appoints its own officers.

71. What are the usual officers of each House?

A speaker, as presiding officer; a secretary, or clerk, a sergeant-at-arms, and a door-keeper, with their assistants.

Rules of proceeding.

72. How are the rules of proceeding of each House determined?

"Each House may determine the rules of its proceeding." *Cons. of U. S. Art.* I. *Sect.* V. 2. [c]

73. Does each House *sit with open doors*?

There is no express provision in the Constitution of the United States on the subject. Generally the proceedings and debates in each House are conducted in public; but either House may, upon any occasion, determine to sit with closed doors; as it is the practice to do, in either House, when acting on matters requiring secrecy, and in the Senate, when deliberating on treaties, nominations to office by the President, and executive business.

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c As to the method of enacting laws, see further on, Chapt. iii.

Journal.

74. Is each House required to keep a journal of its proceedings?

"Each House shall keep a journal of its proceedings, and, from time to time, publish the same, except such parts as may in their judgment require secrecy." *Cons. of U. S. Art.* I. *Sect.* V. 3.

Yeas and Nays.

75. What is the provision of the federal constitution as to the yeas and nays of members of Congress?

"The yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal." *Cons. of U. S. Art.* I. *Sect.* V. 3.

76. What are the yeas and nays?

The votes of the members severally; the vote of each member with his name to be recorded on the journal of the House.

Punishment of members.

77. What power has each House to punish its members?

"Each House may punish its members for disorderly behaviour." *Cons. of U. S. Art.* I. *Sect.* V. 2.

Expulsion of members.

78. What is the provision of the federal constitution as to the expulsion of members of Congress?

"Each House may, with the concurrence of two thirds expel a member." *Art.* I. *sect.* V. 2.

Contempt of either House of Congress.

79. Has each House of Congress power to punish for contempt?

There is no power expressly given to either House of Congress to punish for contempts, except when committed by their own members; but each House has the implied power, as necessary for the performance of its duties, to imprison for contempt persons not members. The power to punish extends no further than to arrest and imprisonment, and that can continue no longer than the power which imprisons. The imprisonment will terminate with the adjournment or dissolution of Congress.

Adjournment.

80. What does the federal constitution provide, as to the power of either House to adjourn separately?

"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place, than that in which the two houses shall be sitting." *Cons. of U. S. Art.* I. *Sect.* V. 4.

OF THE DUTIES AND POWERS OF CONGRESS.

81. Are the powers of Congress limited?

Congress has no other powers than those expressly granted in the federal Constitution, and such as are incidental thereto.

82. What is the general limitation, in the federal constitution, of the powers of Congress?

"The powers not delegated to the United States in this constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S. Amend. Art.* X.

83. Does the express grant of power to Congress in certain enumerated cases imply that its powers are limited?

Yes. "The constitution declares that the powers of Congress shall extend to certain enumerated cases. The specification of particulars evidently excludes all pretentions to a general legislative authority; because an affirmative grant of special powers would be absurd, as well as useless, if a general authority were intended." 1 *Story on the Cons.* 434.

84. Are there powers expressly prohibited to Congress by the federal constitution?

Yes.

85. Can Congress exercise a power contrary to any provision of the federal constitution?

No.

86. How may the powers of Congress be divided?

Into those that are *enumerated* or express, and those that are *incidental.* They are also called *direct*, or *implied.*

87. What is the nature of the *incidental* powers of Congress?

They are those which are necessary to the exercise of the powers expressly granted, by the federal constitution, to Congress.

88. Are the incidental powers to be considered as included in the express powers, and equally delegated with them, by the federal constitution, to Congress, or the general government?

Yes.

89. What provision is there in the federal constitution as to the incidental powers of Congress?

"The Congress shall have power;—to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." *Cons. of U. S. Art.* I. *Sect.* VIII. 18.

90. What is the import of this clause?

That Congress shall have all the incidental and instrumental powers necessary and proper to carry into execution all the express powers.

The term "necessary" here is not to be considered as equivalent to the terms "*absolutely and indispensably necessary;*" and as excluding all means for carrying into effect an enumerated power, except such as without which the grant of the power would be nugatory; but to mean the same as *needful, requisite, essential, conducive to.*

Whenever a question arises concerning the constitutionality of a particular power, the first question is, whether the power be "expressed" in the constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it.

With respect to any proposed measure, "let the end be within the scope of the constitution; and all means which are appropriate, which are plainly adapted to the end, and which are not prohibited, but which are consistent with the letter and spirit of the instrument, are constitutional." *d*

91. What are called *resulting* powers?

A class of implied or incidental powers, arising from the aggregate powers of the general government.

As instances, the United States as a sovereignty is entitled to sue; so, in their political capacity, they have a right to enter into a contract; though there is no express provision therefor in the federal constitution; for these are natural incidents resulting from the sovereignty and character of the national government, so far as they are appropriate to any of the ends of government, and within the range of its powers.

92. May the powers conferred, by the constitution, on the Congress or the general government, be either *exclusive* or *concurrent*?

Yes. See the next head.

ENUMERATED POWERS OF CONGRESS.

93. To what do the powers of Congress, in general, relate?

To subjects of a national nature.

94. Does the mere grant in the federal constitution of a power to the general government, or to Congress, imply that it is to be *exclusive*, and that it is prohibited to the States to exercise the same power?

No; the same power exists *concurrently* in the several States, unless when the federal constitution has expressly in terms given an exclusive power to Congress, or the general government, or the exercise of a like power is prohibited to the States severally, or there is a direct repugnancy and incompatibility in the exercise of it by the States severally.

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d 2 Story on the Constitution, 113, 118, 123.

95. When Congress, in the exercise of a power existing in it concurrently with the States, passes a law, is any State law contrary to it valid?

No; the law of Congress, in such a case, is paramount, and the State law unconstitutional and void, so far as its provisions are different therefrom.

96. In the case of a concurrent power, in Congress, may the several States legislate on the subject, in the absence of any law of Congress thereon?

Yes.

97. If Congress exercises a power existing in it concurrently with the several States, can a State legislate on the subject?

No; not where from the nature of the subject, such legislation must be inconsistent with the discretionary exercise of the power by Congress.

98. Do the several States possess a power, concurrently with Congress, or the general government, in every case where it is granted to Congress or the general government, but is not given in terms exclusively to Congress, or the general government, or prohibited expressly to the several States?

No; a power given to Congress, or the general government, may be from its nature such that it must be exclusive.

Revenue, Taxes.

99. What is the power of Congress as to raising revenue, or laying taxes?

"The Congress shall have power;—to lay and collect taxes, duties, imposts and excises, to pay the debts, and to provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States." *Cons. of U. S. Art.* I. *sect.* VIII. 1.

100. Do the words "to pay the debts, and to provide for the common defence and general welfare," consitute a distinct and substantial power?

No; they are connected with the preceding words in the clause, so as to constitute a qualification of them.

The power of taxation only is given by the clause, and it is limited to objects of a national character, "for the common defence and general welfare." *e*

101. What is the meaning of the terms, "imposts and excises?"

Taxes include every species of what is levied by government; duties are laid upon any kind of commodities generally; "imposts" upon imported articles; and "excises" upon the manufacture, retail, or consumption of goods.

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e Story on the Constitution, II vol. *p.* 367.

102. How may taxes, in general, be divided?
Into *direct* and *indirect* taxes?

103. What are direct taxes?
Direct taxes are those which are laid directly upon the persons or property of individuals. And it has been adjudged that, under the constitution of the United States, direct taxes were only of two species; a tax upon the person, which is called a *capitation* tax or *poll* tax, and a tax upon land. Consequently, all taxes not levied upon the person or land are to be treated as indirect taxes.

104. How must direct taxes be apportioned among the several States?
"No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration, hereinbefore directed to be taken." *Cons. of U. S. Art.* I. *sect.* IX. 4.
"Representatives and direct taxes shall be apportioned among the several States according to their respective numbers." *Cons. of U. S. Art.* I. *sect.* II. 3.

105. How are indirect taxes to be laid?
They "shall be uniform throughout the United States." *Cons. of U. S. Art.* I. *sect.* VIII. 1.

106. May a direct tax be laid by Congress upon property in a District or Territory not represented in Congress?
Yes.
It has been decided by the Supreme Court of the United States, that Congress, in laying a direct tax upon the several States, was not constitutionally bound to extend such tax to the district or territories of the United States; but that it was a matter of discretion. When, however, a direct tax is to be laid on the district or territories, it can be laid only by the rule of apportionment. *f*

107. Has Congress, under this power, claimed and exercised authority to lay duties for the purpose of encouraging and protecting articles of domestic manufacture, or produce, as well as for raising revenue on imports?
Yes. And such power has been claimed, also, under the power of Congress, "to regulate commerce with foreign nations." The laying by Congress of duties upon goods imported, is called a "tariff."

108. Has Congress authority to establish a national bank?
It is claimed, that Congress has such a power as incidental to the enumerated powers to raise money, to regulate commerce, to coin money and regulate the value thereof, and to provide for the common defence and general welfare.

109. In what House of Congress must all bills for raising revenue originate?

f 2 Story's Comm. p. 462.

All bills for raising revenue must originate in the House of Representatives; but the Senate may propose or concur with amendments as in other bills. *Cons. of U. S. Art.* I. *sect.* VII. 1.

110. What prohibition is there in the federal constitution as to Congress laying taxes?

"No tax or duty shall be laid upon articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall any vessel sbound to or from one State be obliged to enter, clear, or pay duties in another." *Cons. of U. S. Art.* I. *sect.* IX. 5.

111. What prohibition is there in the federal constitution as to the several States laying taxes?

"No State shall, without the consent of Congress, lay any imposts or duties upon imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties laid by any State on imports and exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision or control of Congress. No State shall, without the consent of Congress, lay any tonnage duty." *Cons. of U. S. Art. sect.*I. X. 2.

112. Is the power of congress to lay and collect taxes &c. according to the provisions of the constitution, exclusive?

No. It is a power which the States may exercise, except as to duties on imports and exports, concurrently with Congress.

"The language of the constitution does not, in terms, make it an exclusive power in Congress; the existence of a concurrent power is not incompatible with it by Congress; and the States are not expressly prohibited from using it by the constitution." A concurrent power, therefore, remains in the States as a part of their orginal and unsurrendered sovereignty." *g*

It has been decided that a law of a State, laying a tax on the Bank of the United States, was unconstitutional.

It has been held, also, by the Supreme Court of the United States, that a State had not constitutional authority to tax stock issued for loans to the United States. No State can have authority to tax an instrument of the United States.

113. In what manner only can money be drawn from the treasury of the United States.

"No money shall be drawn from the treasury, but in consequence of appropriations made by law." *Cons. of U. S. Art.* I. *sect.* IX. 6.

114. What is the provision of the federal constitution as to the account of the public money?

"A regular statement and account of the receipts and expenditures

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g 2 Story's Comm: p. 412.

of all public monies shall be published, from time to time." *Art.* I. *sect.* IX. 6.

Power to borrow money

115. What power has Congress to borrow money?

"Congress shall have power;—to borrow money on the credit of the United States." *Cons. of U. S. Art.* I. *sect.* VIII. 2.

Power to regulate commerce.

116. What power has Congress to regulate commerce?

"Congress shall have power;—to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." *Cons. of U, S. Art.* I. *sect.* VIII. 3.

117. What is meant by the term "commerce" here?

It includes navigation and intercourse generally.

118. May commerce with foreign countries be regulated by treaties, made by the President and Senate of the United States?

Yes.

"From the nature of this power, it must be exclusive."

"The general power of Congress to regulate commerce is not restricted to the mere buying and selling, or exchanging, of merchandize and commodities, but includes navigation, as well as commercial intercourse in all its branches, and extends to all vessels by whatsoever force propelled, and to whatsoever purposes applied."

Under this power acts of Congress have been passed prescribing the requisites to constitute "American vessels" or requiring them to be navigated by "American seamen," or to conform to other regulations.

"The power to regulate commerce, thus understood, extends to every species of commercial intercourse between the United States and foreign nations, and amongst the States of the Union, and the Indian tribes."

"The commerce of the United States with foreign nations, is the commerce of the whole Union; and each State and district has a right to participate in it by means of the navigable streams which penetrate the country in all directions, and pass through the interior of almost every State in the Union."

The power of Congress to regulate foreign commerce, must be exercised wherever it exists; and as a foreign voyage may commence and terminate at a port within the same State, this power of Congress may be exercised within a State.

"The power of Congress, then, comprehends navigation within every State in the Union, so far as that navigation may be in any manner connected with "commerce with foreign nations, or among the several States, or with the Indian tribes."

"As the power of regulating commerce reaches the interior of a State, and may be there exercised, Congress has a right not only to authorize importations, but to authorize the importer to sell.

An act of a State Legislature, requiring wholesale importers and sellers of foreign goods to obtain a license from the State, and to pay a sum of money for the privilege of selling, was consequently held to be void, as repugnant not only to that provision of the constitution which restricts a State from laying duties on imports, but to that which invests Congress with the power "to regulate commerce."

"The power to regulate foreign commerce extends to the regulation and government of seamen on board of merchant ships belonging to citizens of the United States; to conferring privileges upon ships owned and built in the United States; to quarantine, pilotage, and embargo laws; to wrecks of the seas; the construction of light houses; the placing of buoys and beacons; the removal of obstruction to navigation in creeks, rivers, sounds and bays; to the establishment of securities to navigation against inroads of the ocean; and to the designation of particular ports of entry and delivery for the purposes of foreign commerce.

"The regulation of commerce has also been employed for the purposes of revenue; of prohibition, retaliation, and commercial reciprocity; to encourage domestic navigation; and to promote the shipping and mercantile interests by bounties, discriminating duties, and special preferences; and sometimes to regulate intercourse with a view to mere political objects." *Duer's Constitutional Jurisprudence, p.* 142-5.

The law of a State granting an exclusive privilege of steam navigation upon waters wholly in the State, but which are navigable from the ocean, was held by the Supreme Court of the United States to be void, as repugnant to the federal constitution, so far as such privilege interfered with a similar privilege derived from acts of Congress.

The power of prohibiting the importation of slaves into the United States, after the year 1808, is included in the power to regulate commerce; as the restriction which postponed its exercise, arose from an express exception in the grant of the general power. By acts of Congress the slave trade, in importing slaves from *foreign countries*, by citizens of the United States, is declared to be piracy, and punishable with death.

The power "to regulate commerce among the several States," does not extend to that commerce which is completely internal; and comprehensive as are the terms in which it is conferred, it is, nevertheless, restricted to that commerce which concerns more States than one.

"For the genius and character of the government evince that its action is to be applied to all the external concerns of the nation, and to the internal concerns which affect the States generally; but not to those which are completely within a State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing any of the general powers of the national government.

"The completely internal commerce of a State is therefore reserved for the State itself; but, as the power of Congress to regulate foreign commerce does not stop at the jurisdictional lines of the States, so the power to regulate commerce amongst the States is not limited by State boundaries.

"For not only do waters communicating with the ocean penetrate into the interior, and pass in their course through the several States; but in many cases there are waters in and upon the boundaries of several of the States, which, though not navigable to the sea, afford means of commercial intercourse between those States, and furnish occasions to Congress for the exercise of the power in question.

"This power may be exercised wherever the subject exists; and if the means of commercial intercourse exist within a State; if, for instance, a coasting voyage may commence or terminate within a State, then the power of Congress to regulate commerce amongst the States, may be exercised within a State.

"Commerce amongst the States must necessarily be within the States; and in the regulation of the Indian trade, the action of the law is chiefly within individual States; whilst in this case, as well as with respect to commerce amongst the States, the power of Congress being co-extensive with the subject on which it acts, cannot be stopped at the internal boundary of the State, but must enter its limits, and be exercised within its territorial jurisdiction.

"The power of Congress to regulate commerce amongst the States, extends to regulating navigation, and to the coasting trade and fisheries, within as well as without any State, wherever they are connected with the commercial intercourse with any other State, or with foreign nations.

"It extends also to the regulation and government of seamen; to conferring privileges upon vessels engaged in the coasting trade; and to the navigation of vessels engaged solely in carrying passengers, as well as of those engaged in traffic, whether propelled by steam or otherwise.

"The principles upon which a State law, requiring importers and venders of foreign goods to obtain a license from the State government, was declared to be repugnant to the constitution of the United States, were held to apply to a similar interference with importations from one State to another.

"Although the power of a State to regulate its purely internal commerce, and establish its own police to control and promote that trade, and to guard the health and safety of its citizens, are undoubted; yet, neither these, nor any other acknowleged State powers, can, consistently with the federal constitution, be so used as to obstruct or defeat the power of Congress to regulate commerce amongst the States.

Nevertheless, if measures within the powers of State Legislation do not come into actual collision with the powers of the the general

government over navigable streams within a State, the national courts can take no cognizance of those measures or their effects, where there has been no legislation of Congress with which the operation of the State law could interfere.

The power of Congress to regulate commerce with the Indian tribes is to be construed in the same manner; and it extends equally to tribes living within, or without the territorial limits of the United States; and the trade with them, in all its forms, is subject exclusively to the regulation of Congress.

"The Indian territory within the United States composes a part of the Union; and in the intercourse between the general government and foreign nations, in commercial regulations, and in any attempt at intercourse between foreign nations and the Indian inhabitants, they are considered as within the jurisdictional limits of the United States, and subject to many of the restraints which are imposed by the latter on their own citizens.

The tribes residing within the acknowleged boundaries of the Union, are not deemed foreign nations, within the meaning of the Constitution, but are considered as domestic dependant nations, occupying a territory to which the United States assert a title, which must take effect when the right of occupancy of the Indian ceases; and in the mean time they are in a state of pupilage to the general government.

"Congress has from time to time passed laws to regulate trade and intercourse with the Indians, which treat them as *nations*, respect their rights, and manifest a purpose to afford that protection to them for which treaties stipulate; which laws, and especially the laws now in force, consider the several Indian Nations as distinct political communities, having territorial boundaries, within which their authority is exclusive.

"The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the government of the Union; whilst the powers of Congress to regulate commerce, to declare war, make peace, and conclude treaties, comprise all that is required for regulating intercourse with the Indians." *Duer's Constitutional Jurisprudence, p.* 155-161.

Power to naturalize aliens.

119. What power has Congress as to the naturalization of aliens?

"Congress shall have power to establish an uniform rule of naturalization throughout the United States." *Cons. of U. S. Art.* I *sect.* VIII. 4.

120. Is this power exclusive in Congress?

Yes; the States severally have no power on the subject.

121. What is the provision of the federal constitution as to the privileges and rights of citizens of each State in the several other States?

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." *Cons. of U. S. Art.* IV. *sect.* II. 1.

122. Who are aliens?

Aliens are persons born out of the jurisdiction of the United States. *g*

123. Has Congress passed laws for the naturalization of aliens?

Yes.

124. How may aliens be naturalized, or become citizens of the United States?

They may be naturalized by the courts of record of the United States, or of the several States, under the Acts of Congress, upon complying with the provisions thereof.

125. What are the requisites, in general, under the Acts of Congress, for the naturalization of aliens?

Any alien, being a free white person, of the age of twenty-one years, not a native citizen, denizen or subject of a country at war with the United States, may be so naturalized, on the following conditions:

I. The applicant must have declared his intention, under oath or affirmation, to become naturalized, before some federal or State court of record, or its clerk, two years before his admission; unless he has resided in this country since 1812; or unless being a minor he has resided therein three years before he became of the age of twenty-one years. II. The applicant must have resided for the continued term of five years, next preceding his application, within this country, and one year within the State where the application is made; and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; which must be proved to the satisfaction of the Court, by other testimony than the applicant's own oath. III. The applicant must, at the time of his application, declare on oath or affirmation, before the court, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly by name the prince, potentate, State and sovereignty, whereof he was born a citizen or subject. IV. The applicant must make in the court, an express renunciation of any hereditary title, or order of nobility, that he may have borne in the kingdom or State from which he came.

126. Are the children of persons duly naturalized, being under the

g See head Citizens of the United States, p. 27 And as to the rights and privileges of Aliens, see p 28.

age of twenty one years at the time of their parents being so naturalized, to be considered as citizens of the United States?

Yes.

The act of Congress confines the description of aliens capable of being naturalized to "free white persons." This excludes the inhabitants of Africa, and their descendants. Indians cannot be made citizens under the act of Congress.

Bankruptcy.

127. What power has Congress on the subject of bankruptcy?

"Congress has power;—to establish uniform laws on the subject of bankruptcies, throughout the United States." *Cons. of U S. Art.* I *sect.* VIII. 4.

128. What are, in general, the objects of a bankrupt law?

To compel an equal distribution of the effects of a bankrupt among his creditors, without preference, in proportion to their claims, by providing that from the time of his committing an act of bankruptcy his power over his property shall cease, and that commissioners shall be appointed to take possession of it, and to apply the proceeds thereof to the payment of his debts; and to exempt the person of a bankrupt acting honestly, from liability for his former debts.

129. Is there any Act of Congress in force now on the subject of bankruptcies?

No; the last bankrupt law by Congress was passed on the 19th day of August, 1842, and was repealed on the———————

130. What is the difference, in general, between bankrupt laws and insolvent laws?

By the bankrupt laws the debtor may be discharged from his debts; but by the insolvent laws he is, usually, only discharged from imprisonment or liability thereto.

131. Have the States severally a right to enact bankrupt laws?

Yes; where there is no Act of Congress on the subject in force; and provided that they do not violate the provision of the federal constitution, "that no State shall pass any law impairing the obligation of contracts. And a bankrupt law of a State cannot affect citizens of other States.

Coining money. Currency.

132. What is the power of Congress as to coining money?

"Congress shall have power;—to coin money, and to regulate the value thereof, and of foreign coins." *Cons. of U. S. Art.* I. *sect.* VIII. 5.

133. What is the provision of the federal Constitution as to the power of the several States on the subject?

"No State shall coin money; emit bills of credit; or make any thing but gold and silver a tender in payment of debts." *Cons. of U. S. Art.* I. *sect.* X. 1.

134. What power has Congress as to the punishment of counterfeiting coin?

"Congress shall have power;—to provide for the punishment of conterfeiting the securities and current coin of the United States." *Cons. of U. S. Art.* I. *sect.* VIII. 6.

Weights and measures.

135. What is the power of Congress as to weights and measures?

"Congress shall have power;—to fix the standard of weights and measures." *Cons. of U. S. Art.* I. *sect.* VIII. 5.

136. Has Congress ever exercised this power?

Yes.

It is directed by Act of Congress that a complete set of the standard weights and measures used at the custom houses, and for other public purposes, shall be delivered to the Governor of every State, or some person appointed therein, to be uniform standards throughout the Union.

137. What is the power of the several States on the subject?

Until Congress shall fix a general standard of weights and measures for the United States, each State has the power of fixing a standard for itself. Many of the States have by law established such standards, for certain purposes.

Post-offices, and post-roads.

138. What is the power of Congress as to post-offices and post-roads?

"Congress shall have power;—to establish post offices and post roads." *Cons. of U. S. Art.* I. *sect.* VIII. 7.

"This power isexclusive, so far as it relates to the conveyance of letters and other articles by mail; but not in regard to post roads, as it would be unnecessary for Congress to make another road where a sufficient one for the purpose already existed; whilst, on the other hand, no State has power to deny or obstruct the passage of the mail over its public roads.

"Various provisions, in regard to post offices and the conveyance of letters and other articles by mail, have been made by Congress at different times, founded on the principle of the power being exclusive as to those objects." Duer's Constitutional Jurisprudence, p. 161, 162.

It has been claimed, that under this power, in conjunction with the powers to raise money to provide for the general welfare, and to pass all laws necessary and proper for carrying into execution the powers vested in the general government, Congress has power to appropriate money and provide for *internal improvements* in the several States by means of roads and canals.

It has also, been claimed that Congress has the power to lay out, construct and improve post roads and military roads, with the assent of

the States through which they pass, as well as to construct canals through the several States, for promoting and securing internal commerce, and for the more safe and economical transportation of troops and military stores in time of war; leaving the right of jurisdiction over the soil to the respective States.

Copy rights, and patent rights.

139. What is the power of Congress as to patent rights and copy rights?

"Congress shall have power;—to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." *Cons. of U. S. Art.* I. *sect.* VIII. 8.

140. Has Congress passed laws on this subject?

Yes. There are acts of Congress securing to authors of books, &c, being citizens of the United States, or residents therein, the exclusive right of printing, publishing and selling them; for twenty-one years, to be renewed for fourteen years by the author or his widow or children; and to inventors of useful arts, machines, manufactures &c., the exclusive right of making and selling the same for fourteen years.

141. What is such a right called?

The right intended to be secured to an author is called a *copy right*; and to an inventor, a *patent right.*

Piracies and felonies on the high seas.

142. What power has Congress as to piracies and felonies on the high seas?

Congress shall have power;—to define and punish piracies and felonies committed on the high seas." *Cons. of U. S. Art.* I. *sect.* VIII. 10.

Piracy is defined by the law of nations to be robbery, or a forcible depredation, on the high seas, without lawful authority. And by the *high seas* is understood not only the ocean out of sight of land, but waters on the sea coast beyond the boundary of low water mark.

Congress has the right to pass laws to punish pirates, though they be foreigners, and may have committed no particular offence against the United States; and for the purpose of giving jurisdiction, it is of no importance on whom, or where a piratical offence has been committed.

By Act of Congress robbery on the high seas, or in any open roadstead or bay, where the sea ebbs and flows, in or upon any vessel or its crew or lading, is punishable as piracy.

Offences against the law of nations.

143. What power has Congress as to offences against the law of nations?

"To define and punish offences against the law of nations." *Cons. of U. S. Art.* I. *Sect.* VIII. 10. *h*

Offences against the law of nations are violations of *safe conducts*, or passports, infringements of the rights of ambassabors or other foreign ministers, and piracies. There are acts of Congress providing for the punishment of these offences.

War.

144. What is the power of Congress as to declaring war?

"Congress shall have power;—to declare war; grant letters of marque and reprisal; and to make rules concerning captures on sea and land." *Cons. of U. S. Art.* I. *sect.* VIII. 11.

145. What are letters of marque and reprisal?

Commissions from a government to private citizens to seize and capture the bodies or property of another nation. They are generally issued in time of war. A person so commissioned is called a privateer.

146. What is the provision of the federal constitution as to any State engaging in war?

"No State shall without the consent of Congress; engage in war, unless actually invaded, or in such imminent danger, as will not admit of delay." *Cons. of U. S. Art.* I. *sect.* X. 2.

"No State shall grant letters of marque and reprisal." *Art.* I. *sect.* X. 1.

Army and Navy.

147. What is the power of Congress as to raising and supporting armies and navies?

"Congress shall have power;—to raise and support armies; but no appropriation of money to that use shall be for a longer term than two years." *Cons. of U. S. Art.* I. *Art.* VIII. 12.

148. What is the power of Congress as to a navy?

"Congress shall have power;—to provide and maintain a navy." *Cons. of U. S. Art.* I. *sect.* VIII, 13.

149. What is the power of Congress as to the government of the land and naval forces?

"Congress shall have power;—to make rules for the government and regulation of the land and naval forces." *Cons. of U. S. Art.* I. *sect.* VIII. 14.

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h See, as to the law of nations, Part ii. chap. ii.

150. Are the several States prohibited from keeping troops or ships of war?

"No State shall, without the consent of Congress;—keep troops or ships of war, in time of peace." *Cons. of U. S. Art.* I. *sect.* X. 2.

Military academy.

151. How is the power of Congress to establish a military academy derived?

It is an incidental power; incidental to the powers to make war, to raise armies, to provide and maintain a navy, and to lay and collect taxes, to provide for the common defence and general welfare.

Militia.

152. What is the power of Congress as to calling out the militia?

"Congress shall have power;—to provide for calling out the militia, to suppress insurrections, and repel invasions." *Cons. of U. S. Art.* I. *sect.* VIII. 15.

153. What is the power of Congress as to organizing, arming, disciplining, and governing the militia?

"Congress shall have power;—to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress." *Cons. of U. S. Art.* I. *sect.* VIII. 16.

154. Is the President of the United States commander-in-chief of the militia of the several States, when called into the actual service of the United States?

Yes. *Cons. of U. S. Art.* II. *sect.* II. 1.

155. How are arms provided for the militia?

Under acts of Congress, the general government furnishes to the several States arms and military equipments, in proportion to their number of militia respectively. There are national armories for the manufacture of such arms and equipments. The arms and equipments thus supplied are preserved by the States, to be distributed to the militia for discipline, and to be ready for actual service.

156. Are there Acts of Congress for organizing and disciplining the militia in the several States?

Yes.

157. Are there Acts of Congress providing in what manner the militia may be called forth into the service of the United States?

Yes. It is provided, in general, by the Acts of Congress, that the President of the United States shall be authorized, in case of invasion, or of imminent danger of it, to call forth such number of the militia, most convenient to the scene of action, as he may deem neces-

sary. The President's orders, for this purpose, may be given to the chief executive magistrate of a State, or to any militia officer he may think proper. The manner in which the militia is to be organized, armed, disciplined, and governed, is prescribed; and provision made for drafting, detaching, and calling forth the State quotas, when required by the President. The militia so called out are made subject to the rules of war. And persons refusing or neglecting to perform military service, when regularly called or drafted, are liable to a fine, to be adjudged by a court-martial, composed of militia officers.

158. Has it been adjudged by the Supreme Court of the United States that, under the federal constitution and Acts of Congress, it belongs exclusively to the President to judge when the exigency arises, in which he may call forth the militia?

Yes. *i*

Seat of Government of the United States &c.

159. Has Congress the power of exclusive legislation over the District of Columbia, and any other places?

"Congress shall have power;—to exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the Seat of Government of the United States, and to exercise like authority over all places purchased, by consent of the Legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." *Cons. of U. S. Art.* I. *sect.* VIII. 17.

160. What district has become the seat of government of the United States?

The District of Columbia, in which is the city of Washington.

261. Is there any representative or Senator in Congress, from the District of Columbia?

No.

162. Has it any local legislature?

No.

163. By what laws is it governed?

By laws made directly by Congress, either adopting those in force there, or enacting new provisions.

Treason, and the punishment thereof.

164. What is the power of Congress as to the punishment of treason?

"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted. *Cons. of U. S. Art.* V. *sect.* II. 2.

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i 1 Kent's Com. on American Law, p. 264, 265.

164. What is treason against the United States?

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." *Cons. of U. S. Art.* III. *sect.* III. 1.

165. Does the term "war" in this provision comprehend internal rebellion as well as hostilities from abroad?

Yes.

Territory and property of the United States.

166. What power has Congress as to the territory and property of the United States?

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property, belonging to the United States." *Cons. of U. S. Art.* IV. *Sect.* III. 2.

This territory consists of all the *vacant* and other lands belonging to the United States. It constitutes the *public domain.* It is the exclusive property of the Union, subject only to the Indian rights that may exist.

The United States acquired their title to the public lands; by transfer or succession from Great Britain, as the effect of the revolution, and by the treaty of peace thereon with that nation; by cessions from the different States; and by purchase, or treaty, from foreign governments.

By Acts of Congress provision is made for the survey and sale of the public vacant lands. There is a branch of the treasury department of the United States called the department of public lands, and placed under the control of a chief officer, entitled commissioner of the *general land office.* Before any proceedings for the sale of such lands, the Indian title to them is extinguished by treaty through *Indian agents*, appointed by the government. Such territory is divided into *districts*, in each of which there is a *register* and a *receiver of public moneys.* A *surveyor general* is appointed for a certain number of districts. The territory is surveyed into *ranges*, *townships*, and *sections.* The townships are six miles square, and divided into thirty-six sections of one mile square; a section thus containing six hundred and forty acres. The sections are also divided into half sections, quarter sections, and eighths of a section. The public lands are offered for sale, at first, by auction, at not less than one dollar and a quarter per acre, to be paid at the time; and, if not then sold, they are open for private sale at the land office in the district, at that price. Salt springs and lead mines on the public lands are reserved to the United States. One section of land in every township is appropriated by Act of Congress for the purposes of education.

167. What was the condition annexed to the cession of their pub-

lic lands that were granted to the general government by the States, in relation to the proceeds of the sale of them?

That they should be a *common fund* for the joint benefit of the then existing and future members of the Union.

"These lands, therefore, constitute a fund which may be properly devoted to any objects which are for the common benefit of the Union." *j*

168. Has the general government power to acquire and purchase foreign territory by conquest or treaty, or cession?

Yes. It is incidental to the power to make war, and to form treaties.

The power to make such purchases is not expressly conferred by the federal constitution. It appears to be incidental to the powers to form treaties, and to raise and appropriate money "for the common defence and general welfare."

"Since the adoption of the federal constitution large acquisitions of national territory have been made by the purchases of Louisiana and Florida, and by cession from the State of Georgia; and the constitutionality of the two former acquisitions, though formerly much questioned, is now considered settled beyond any doubt. *k*

169. Is the power of Congress over the public territory and property exclusive and universal?

Yes. Its legislation over such territory without the limits of the several States is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by ordinances or laws under which it has been settled.

But the power of Congress to regulate other national property is not necessarily exclusive in all cases, unless it has acquired by cession of the States exclusive jurisdiction. If the national government owns a fort, arsenal, hospital, or light house establishment, not so ceded, the general jurisdiction of the State is not excluded in regard to the site; but, subject to the rightful exercise of the powers of the national government, it remains in full force. *l*

Territorial governments.

170. What are the territorial governments of the United States?

Governments of the territories belonging to the United States, and not lying within the limits of any State. These governments are created by Act of Congress, and are dependant upon the general government.

"As the general government possesses the power to acquire territory, either by conquest or by treaty, it would seem to follow, as an inevitable consequence, that it possesses the power to govern what it

j 3 Story Comm. p 198.
k 3 Story's Comm. p. 191.
l 3 Story's Comm. 198.

has so acquired. The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any State. It must, consequently, be under the dominion and jurisdiction of the Union, or it would be without any government at all."

"No one has ever doubted the power of Congress to erect territorial governments within the territory of the United States, under the general language of the clause "to make all needful rules and regulations." What shall be the form of government established in the territories depends exclusively upon the discretion of Congress. Having a right to erect a territorial government, they may confer upon it such powers, legislative, judicial and executive, as they may deem best. They may confer upon it general legislative powers, subject only to the laws and constitution of the United States." *m*

171. What is the form of government, in those territories, under the Acts of Congress?

There is for each territory a Governor, judges, and other officers, appointed by the general government; and a legislature consisting of a House of Representatives and legislative council, elected by the people; the Governor having an absolute negative upon the acts of the legislature.

172. Have the Territories any Representatives in Congress?

There is one delegate from each Territory, chosen by the legislature thereof, to the House of Representatives of the United States; but who cannot vote therein.

Admission of new States into the Union.

173. What is the provision of the federal constitution as to the admission of new States into the Union?

"New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress." *Cons. of U. S. Art.* IV. *sect.* III. 1.

174. Is there any limitation of this power, in regard to the form of government of a State which it is proposed to admit?

"The United States shall guarantee to every State in the Union a republican form of government." *Cons. of U. S. Art.* IV. *Sect.* IV.

175. Has Congress power to admit into the Union a new State out of territory acquired of a foreign country by conquest or treaty?

Yes.

"As an incidental power, the constitutional right of the United States to acquire territory would seem so naturally to flow from the

m 3 Story's Comm. p. 193-4.

sovereignty confided to it, as not to admit of very serious question. The constitution confers on the government of the Union the power of making war, and of making treaties; and it seems, consequently, to possess the power of acquiring territory either by conquest or treaty. If the cession be by treaty, the terms of that treaty must be obligatory; for it is the law of the land. And if it stipulates for the enjoyment by the inhabitants of the rights, privileges, and immunities of citizens of the United States, and for the admission of the territory into the Union as a State, these stipulations must be equally obligatory. They are within the scope of the constitutional authority of the government, which has the right to acquire territory, to make treaties, and to admit new States into the Union." *o*

176. Has Congress a right to impose a restriction, prohibiting the introduction of slavery into a State, as a condition of its admission into the Union?

Yes.

"By this provision, (of the federal constitution) the whole subject of admitting new States, where other States are not interfered with, is placed under the control of Congress, with the single restriction, contained in another clause, that their constitutions must be republican." *p*

"At the time when the preliminary measures were taken for the admission of the State of Missouri into the Union, an attempt was made to include a restriction, prohibiting the introduction of slavery into the State as a condition of its admission. On that occasion the question was largely discussed, whether Congrsss possessed a constitutional authority to impose such a condition, upon the ground that the prescribing such a condition is inconsistent with the sovereignty of the State to be admited, and its equality with the other States. The final result of the vote, which authorized the erection of that State, seems to establish the rightful authority of Congress to impose such a restriction, although it was not then applied. In the Act passed for this purpose there is an express clause, that in all the territory of Louisiana, which lies north of 36° 30′ North latitude, not included within the limits of the State of Missouri, slavery and involuntary servitude shall be forever prohibited. An objection of a similar character was taken to the compact between Virginia and Kentucky, containing conditions upon which the latter was erected into a separate State, upon the ground that it was a restriction upon State sovereignty. But the Supreme Court of the United States had no hesitation in overruling the objection, considering it as opposed to the theory of all free governments, and especially of those which constitute the American republics." *q*

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o 3 Story's Comm. p. 460. And see, above p. 65, 66.
p Walker's American Law, p. 45.
q 3 Story's Comm. p. 191.

Is an Act of Congress constitutional, which provides that a foreign territory shall, with the consent of the government or people thereof, be annexed to this country, and admitted into the Union as a State, or to be entitled to be so admitted upon the same terms as territory now within the Union? The measures taken to effect the annexation of Texas to this country have raised this question, on which there has been much difference of opinion. On the one hand, against the constitutionality of such an act, the argument has been advanced, that our general government is one of limited powers, distributed amongst distinct departments or branches of government, which are constituted in a particular manner, each operating in its appropriate sphere, and intended as a check upon the others; that by the constitution a treaty making power is specially established, the constitution providing that the President "shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur;" and that the power of making an arrangement, or of adopting any measures with a foreign government or people, is thus exclusively vested in the President and Senate. On the other hand, in favor of effecting such an annexation by the ordinary legislation of Congress, it is maintained, that the power to do so is contained in the constitutional provision that "new States may be admitted, by Congress, into this Union."

There appears to be much reason for the opinion, that, in whatever manner territory may be acquired by the general government, or annexed to this country, the power to admit into the Union new States, to be formed out of such territory, is exclusive in "Congress," to be exercised in the course of legislation.

General provision as to the powers of Congress.

177. What general provision is there in the federal constitution as to the powers of Congress?

"Congress shall have power;—to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." *Cons. of U. S. Art.* I. *sect.* VIII. 18. *k*

Proof of public acts and records of any State in every other State.

178. Has Congress power to prescribe the manner in which the public acts, records, and judicial proceedings of any State shall be proved in every other, and the effect thereof?

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And Congress may, by general laws, prescribe the manner in which such acts, records and judicial proceedings shall be proved, and the effect thereof. *l* *Cons. of U. S. Art.* IV. *Sect.* I.

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k See chapt. iii. ques. 87-91, inclusive.

l See more fully on this subject, Part i. chap. vi.

ACTS OF CONGRESS, OR LAWS OF THE UNITED STATES.

How enacted.

179. How may laws originate in Congress?

Laws may originate in either House; except that, by the federal constitution, "no bill for raising revenue shall originate in the House of Representatives, but the Senate may propose, or concur in amendments, as in other bills."

180. How are laws enacted in Congress?

All laws must be first passed in one House, and then in the other, according to the rules of proceeding in each House. And, by the federal constitution, "every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law." *Cons. of U. S. Art.* I. *sect.* VII. 2.

181. Must every joint resolution, order, or vote, of the two Houses of Congress, be presented to the President of the United States for his approbation?

"Every joint order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or being disapproved, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill." *Cons. of U. S. Art.* I. *sect.* VII. 3.

182. What is the President's disapproving a bill called?

His *vetoing* it.

183. Are the rules of proceeding in each House of Congress substantially the same?

Yes.

184. What is a "bill" in Congress?

It is an original draft or project of a law, introduced into either House according to the rules thereof.

185. What is the method, in general, of enacting laws by the two Houses of Congress?

Bills are introduced into either House, upon the order of the House on the reports of *standing* or *select* committees, or upon leave granted to an individual member on motion, after due notice of his intention to move the House to grant it.

Standing Committees are appointed for the session, in each House, upon all the usual subjects of ordinary legislation, and upon the general matters incident to the proceedings of each House.

Select committees are appointed from time to time upon special subjects as they arise, and their powers cease upon the performance of the temporal duties assigned to them.

Both standing and select committees are appointed in the House of Representatives on the nomination of the Speaker; and in the Senate most generally by ballot, but in some cases on the nomination of the President of the Senate.

Bills are introduced by standing Committees upon the order of the House upon subjects embraced within the general objects of their appointment, either accompanied by a report upon those general objects, or upon a particular subject, relative thereto, or specially referred to them; or upon the mere motion of the chairman, or any other member of the Committee, under its direction, without previous notice.

Bills are in like manner introduced by select committees, upon the order of the House on a report relative to the special matter referred to them, or on motion, without previous notice, for leave to report by bill.

Every bill must receive three readings before it can be passed by either House; and these several readings must be on different days, unless upon a special order, made by the unanimous consent of the House, to the contrary.

No bill can be committed to a committee or amended in either House, until it has been read twice; and upon the second reading of the bill, it is declared to be ready for commitment or engrossment; if committed, it is referred either to a standing committee, or to a select committee, or to a committee of the whole House; or if the bill, instead of being committed, be ordered to be engrossed, the House then appoints a day on which it shall be read the third time.

If a bill be committed to a committee of the whole, the House determines upon what day the committee shall consider it; and when the House resolves itself into such committee, the Speaker leaves the chair, after appointing another member to preside as chairman of the committee; and the Speaker may take part in the debates of the committee as an ordinary member. In the Senate the President of the Senate acts as chairman of the committee of the whole.

Important bills are generally referred to a committee of the whole House; and every motion or proposition for a tax or charge upon the people, or for a variation in the sum or *quantum* of a tax or duty, or for an appropriation of money, is required first to be discussed in a committee of the whole.

After commitment and report to the House, and at any time before its final passage, a bill may be re-committed at the pleasure of the House: and when a bill, either upon the report of the Committee, or after full discussion and amendment in the House, stands for the next stage of its progress, the question is whether it shall be engrossed and read a third time.

When a bill has been engrossed for a third reading, and, upon being read the third time, has passed one House, it is transmitted for concurrence to the other House, in which it is subjected to similar forms of examination and discussion.

If it be altered or amended, or agreed to without amendment, or totally rejected, in the House to which it has been sent for concurrence, it is, in either case, returned to the House in which it originated, with a message communicating the result.

If amendments be made to a bill in the House to which it is transmitted for concurrence, they must be acted upon by the other House, and if agreed to, the bill is passed; if disagreed to, the House making them must *recede* from them, or, if *insisted upon*, the bill fails, unless the two Houses, through committees of *conference* or otherwise, come to an agreement on the subject.

When a bill has passed both Houses of Congress, it is delivered to a joint committee of both Houses for *enrollment*, who see that it is correctly copied; it is then signed by the presiding officers and clerks of the two Houses; and presented, by a joint committee, to the President of the United States for his approval, or disapproval, of it.

Authority and force.

186. Of what force are Acts of Congress?

"This constitution, and the laws of the United States which shall be made in pursuance thereof;—shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding. *Cons. of U. S. Art.* VI. 2.

187. Does the power to make laws include the power to repeal them?

Yes.

188. What is a law passed by Congress called?

An act of Congress, or law of the United States.

189. What is a statute?

A statute is a written law of a country, made and enacted by the

legislative authority thereof. *m* The Acts of Congress are the statutes of the United States.

190. When is an Act of Congress to be considered as having been passed and enacted?

When it was approved and signed by the President of the United States, or, without his approval, became a law, as prescribed by the federal constitution.

191. What is the date of an Act of Congress?

The day of its being approved by the President of the United States, or of its becoming a law.

192. From what time does a law begin to take effect?

From its date, unless it is otherwise provided in its terms.

193. Does the latest statute repeal all former statutes so far as their provisions are contrary to or inconsistent with it?

Yes.

194. May an Act of Congress, which has gone through all the forms of a law, be declared unconstitutional and void?

Yes. Any act of Congress, which is contrary to the provisions of the federal constitution, is void; and may be so adjudged by the courts of justice, in the administration of the law.

195. How may an Act of Congress be finally adjudged to be constitutional or unconstitutional?

By the Supreme Court of the United States; to which appeals may be had from all the inferior Courts of the United States; and from the highest court of law or equity in any State, when the validity or construction of any such Act of Congress shall be drawn in question, and the decision shall be against it. *n*

196. May the State courts, in the ordinary course of administering justice, pronounce a law of the United States, or an authority exercised under the national government, to be void, as repugnant to the federal constitution.

Yes; but this power is exercised subject to the appeal which lies in all such cases to the Supreme Court of the United States, whose decision alone is final and conclusive.

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m See Part the Second, chap. ii.

n See head Judiciary, chap. ix. and, also, chap. ii. p. 31.

CHAPTER IV.

POWERS PROHIBITED TO CONGRESS, AND THE GENERAL GOVERNMENT.

1. Are there certain powers expressly prohibited, by the federal constitution, to the Congress, and the general government? *a*

Yes.

2. Are there powers prohibited to Congress by certain general principles and provisions, which are contained in the federal constitution? *b*

Yes.

3. Can Congress, or the general government, exercise any power thus prohibited, or contrary to any provision of the federal constitution?

No. It would be unconstitutional.

Importation of slaves.

4. What is the provision of the federal constitution as to the importation of slaves?

"The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." *Cons. of U. S. Art.* I. *sect.* IX. 1.

5. Does this imply that Congress has had the power, since the year 1808, and now possesses it, to prohibit the importation of slaves?

Yes. Such a power is included in the power of Congress to regulate commerce. And there are laws of the United States prohibiting such importation from any *foreign* country, under severe penalties; and declaring any participation in the *foreign* slave trade to be *piracy*.

By the acts of Congress of 1794 and 1800, all citizens of the United States, and residents thereof, were prohibited, under severe penalties, from being in any way concerned in carrying on the slave trade, except for the direct importation of slaves into the country. In 1807 an act of Congress was passed prohibiting altogether such importation, to take effect from the first day of the year 1808. The act of Congress of 1820 declares any participation in the foreign slave trade to be piracy, and punishable with death.

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a See above, chap. i. p. 24, and chap. iii. p. 49, as to the classes of powers.
b See Part the First, chap. vii.

The ordinance of Congress of 1787, providing for the government of the North Western Territory, forever prohibited slavery therein. The act of Congress admitting Missouri as a State into the Union, expressly prohibits slavery in all the territory West of the Mississippi, and North of the latitude of 36° 30′, except Missouri. *c*

Writ of Habeas Corpus.

6. What is the provision of the federal constitution as to the writ of *Habeas Corpus*?

"The privilege of the writ of *Habeas Corpus* shall not be suspended, unless when in case of rebellion, or invasion, the public safety may require it." *Cons. of U. S. Art.* I. *sect.* IX. 2.

7. What is the writ of *Habeas Corpus*?

It is a writ issued by a judge or a court of justice, at the instance, or in behalf, of a person alleged to be unlawfully imprisoned, or deprived of his liberty, in any manner; requiring that he shall be produced, with the cause of his imprisonment, before a judge or court of justice, that, if sufficient cause is not shewn to the contrary, he may be discharged or liberated.

8. Is there a similar provision in the constitutions of most of the several States?

Yes. *d*

Bill of attainder.

9. What is the provision of the federal constitution as to a bill of attainder?

"No bill of attainder shall be passed." *Cons. of U. S. Art.* I. *sect.* IX. 3.

10. What is a bill of attainder?

A special law, inflicting capital punishment on a particular person or persons for an offence or offences before committed, without a trial or conviction in the ordinary courts of justice. Such punishment was formerly attended with forfeiture of estate, and the corruption of the blood, called in law "attainder," so as to take away or prevent all right of inheritance or succession in his children. *e*

If the law inflicts a milder punishment than death, it is called a *Bill of Pains and Penalties;* but it seems, that Bills of Attainder, in the sense of the Constitution, include these.

11. Is there a similar provision in the constitutions of the several States?

Yes. *f*

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c See Part i. chap. iii, head Power of Congress to regulate commerce.
d See Part ii. chap. iii.
e See, as to Pennsylvania, Part the third, chap. iii.
f See Part the second, chap. iii.

Ex post facto laws.

12. What is the provision of the federal constitution as to *ex post facto* laws?

"No *ex post facto* law shall be passed." *Cons. of U. S. Art.* I. *sect.* IX. 3.

13. What is an *ex post facto* law?

A law relative to an act done or committed before the law was enacted. It has been adjudged that the prohibition refers only to criminal laws, and applies to any law which makes an act criminal which was before innocent, or punishable in a mode or measure in which it was not punishable when the act was committed, unless it be to diminish the punishment.

14. Is there a similar provision in the constitutions of the several States?

Yes. *g*

As to taxes or duties.

15. What prohibition is there in the federal constitution as to the manner of laying taxes or duties?

"No capitation, *h* or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed." *Cons. of U. S. Art.* I. *sect.* IX. 4.

As to taxes on exports.

"No tax or duty shall be laid on articles exported from any State." *Cons. of U. S. Art.* I. *sect.* IX. 5.

As to the ports and commerce of the several States.

16. What prohibition is there in the federal constitution as to giving a preference to the ports or commerce of any one State over another?

"No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties, in another." *Cons. of U. S. Art.* I. *sect.* IX. 5.

Drawing money from the treasury.

17. What prohibition is there in the federal constitution as to drawing money from the treasury of the United States?

"No money shall be drawn from the treasury, but in consequence of appropriations made by law." *Cons. of U. S. Art.* I. *sect.* IX. 6.

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g See Part the Second, chap. iii; and as to Pennsylvania, Part the Third, chap. iii.

h See Part the First, for the meaning of the terms, p. 52.

Titles of nobility &c.

18. What is the prohibition in the federal constitution as to titles of nobility?

"No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State." *Cons of U. S. Art.* I. *sect.* IX. 7.

As to religion.

19. What prohibition is there to Congress as to an establishment of religion?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Cons. of U. S. Amend. Art.* I.

"But no religious test shall ever be required as a qualification to any office or public trust under the United States. *Cons. of U. S. Art.* VI. 3.

Freedom of speech and the press.

20. What is the prohibition to Congress as to the freedom of speech and of the press?

"Congress shall make no law;—abridging the freedom of speech or of the press." *Cons. of U. S. Amend. Art.* I.

Right of petition.

21. What prohibition to Congress is there as to the right of petition?

"Congress shall make no law;—abridging the right of the people peaceably to assemble, and to petition the government for redress of greivances." *Cons. of U. S. Amend.* I.

General provision as to powers not delegated.

22. What general provision is there, in the federal constitution, as to powers not delegated to the United States?

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Cons. of U. S. Amend. Art.* X.

CHAPTER V.

POWERS PROHIBITED TO THE STATES SEVERALLY.

1. Are there powers expressly prohibited, by the federal constitution, to the States severally?

Yes?

2. How may these prohibitions be divided?

Into *absolute* and *qualified*; those qualified being powers not to be exercised "without the consent of Congress."

3. May not powers expressly granted to Congress, or the general government, be of such a nature as to be exclusive, so that the States are not authorized severally to exercise them?

Yes. *a*

4. Are there not prohibitions of power to the several States contained in certain general principles and provisions of the federal constitution?

Yes.

5. Can a State pass a law, or exercise a power, contrary to any provision of the federal constitution?

No.

6. As to that class of powers which exist in the general government and the several States *concurrently*, if the general government exercises such a power, can a State exercise it differently?

No. *b*

7. Are there cases, in which if the general government exercise such a power, a State cannot legislate or act on the subject?

Yes. *b*

No treaty or alliance, &c.

8. What is the prohibition, in the federal constitution, as to a State entering into any treaty or alliance?

"No State shall enter into any treaty, alliance or confederation." *Cons. of U. S. Art.* I. *sect.* X. 1.

"No State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power." *Cons. of U. S. Art.* I. *sect.* X. 2.

The implied power of a State to enter into agreements with another

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a See, above, chap. vii. ques. 1–5, inclusive.

b See, above, chapt. ii. p. 33–4, and chap. iii. p. 50–1.

State or foreign power, with the consent of Congress, is understood to refer only to agreements respecting matters of local concern, as questions of boundary, and the like.

Not to engage in War.

9. What is the prohibition?

"No State shall;—grant letters of marque and reprisal. *Cons. of U. S. Art.* I. *sect.* X. 1.

"No State shall, without the consent of Congress;—engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." *Art.* I. *sect.* X. 2.

Not to keep troops, &c.

10. What is the prohibition?

"No State shall, without the consent of Congress;—keep troops or ships of war in time of peace." *Cons. of U. S. Art.* I. *sect.* X. 2.

Not to coin money, emit bills of credit, &c.

11. What is the prohibition?

"No State shall;—coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts." *Cons. of U. S. Art.* I. *sect.* X. 1.

No law impairing contracts.

12. What is the prohibition?

"No State shall;—pass any law impairing the obligation of contracts." *Cons. of U. S. Art.* I. *sect.* X. 1.

13. What has been adjudged as to the construction of this provision of the federal constitution?

That the prohibition is limited to the passage of any law impairing *prior contracts.* That it extends to contracts between States, or between a State and individuals; a charter or law creating a private corporation being such a contract, but not a charter or law creating a public corporation. c

By contracts, in the sense of the constitution, are understood: 1. Every executed agreement, whether between individuals, or between individuals and a State; 2. Every executory agreement, which confers a right of action, or creates a binding obligation, in relation to property or some object of value, and which may be enforced in a court of justice. But the term *contract* does not comprehend the political relations between a government and its citizens.

A legislative compact or grant is within the meaning of the constitution; and when a law in its nature amounts to a contract, and absolute rights have vested under it, its repeal can neither divest those rights, nor destroy nor impair a title acquired under them; for a grant is a contract executed.

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c As to public and private corporations, see Part the Second, chap. ii.

14. Is there a like express prohibition, in the federal constitution, on Congress?

No. Congress has, however, no power to interfere with contracts, unless it be expressly granted to it. Congress is invested with this power in relation to Bankruptcies, as an enumerated, not as an implied power; and in no other form can it impair the obligation of a contract.

15. Is there a similar provision in the constitutions of the several States?

Yes.

No ex post facto law.

16. What is the prohibition?

"No State shall pass;—any ex post facto law." *d* *Cons. of U. S. Art.* I. *sect.* X. 1.

No bills of attainder.

17. What is the prohibition?

"No State shall;—pass any bill of attainder." *e* *Cons. of U. S. Art.* I. *sect.* X. 1.

No title of nobility.

18. What is the prohibition?

"No State shall;—grant any title of nobility." *Cons. of U. S. Art.* I. *Sect.* X. 1.

No duties on imports or exports.

19. What is the prohibition?

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of Congress." *f* *Cons. of U. S. Art.* I. *sect.* X. 2.

No duty on tonnage.

20. What is the prohibition?

"No State shall, without the consent of Congress, lay any duty on tonnage." *Cons. of U. S. Art.* I. *sect.* X. 2.

21. What is tonnage?

The capacity of a ship or vessel, or weight of goods carried by her, estimated per ton.

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d See explanation of terms, page 76.

e See explanation of terms, page. 75.

f See explanation of terms above, page 51; and as to the powers of the several States to lay taxes generally, p. 53.

Fugitives from service or labor.

22. What is the provision of the federal constitution as to fugitives from labor and service?

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due." *Cons. of U. S. Art.* IV. *sect.* II. 3.

The terms "held to labor or service" have been judicially construed to comprehend or mean slaves. The course of proceeding for the arrest and recovery of fugitive slaves by their owners is directed by Act of Congress, of February 12th, 1793; which provides that when a person held to labor or service in any of the United States, or in either of the territories on the North West or South of the river Ohio, under the laws thereof, shall escape into any other of the said States or territories, the person to whom such labor or service may be due, his agent or attorney, is empowered to seize or arrest such fugitive, and to take him or her before any judge or District Court of the United States, residing or being within the State, or before any magistrate of a county, city or town corporate, where such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavit taken before and certified by a magistrate of any such State or territory, that the person so seized or arrested doth, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, which shall be sufficient warrant for removing the said fugitive to the State or territory from which he or she fled. The Act of Congress, also, imposes a penalty upon any person knowingly and wilfully obstructing or hindering such claimant from seizing or removing his fugitive slave.

State judges or magistrates are not compelled to exercise jurisdiction under an Act of Congress; but they may do so, if not prohibited by the laws of the State.

It has been decided, by the Supreme Court of the United States, that the Act of Congress of 1793, was constitutional, and passed in pursuance of an express provision of the constitution of the United States; that it excludes all State legislation on the same subject; and that no State has a right by its own legislation to interfere with or impede the execution of any law of Congress on the subject of fugitive slaves. 16 *Peters' Report*, *p.* 569. This decision renders void all statute regulations by the several States on the subject, so far as they conflict with the Act of Congress.

It has, also, been adjudged, by the Supreme Court of the United States, that the owner may pursue and take his fugitive slave in another State without warrant; that he may arrest him anywhere, and at any time, and that no person has a right to oppose the master,

or demand proof of property. 1 *Baldwin's Report*, *p.* 571. 16 *Peters' Reports*, 539.

The clause of the federal constitution on this subject, and the Act of Congress, apply only to persons *escaping* or being *fugitives* from labor or service; and if a slave be voluntarily brought, by his master, into a State where slavery does not exist by law, or comes there with the consent of his master, the slave becomes free, and cannot be compelled to return. 2. *Kent's Comm. p.* 257, *note.*

Where a slave was carried by the owner to France, where slavery is not tolerated, and under the operation of whose laws the slave became immediately free, and was brought back to Lousiana, it was decided by the Courts in that State, that the slave having been free for one moment in France could not be reduced to the state of slavery again in Lousiana. 2. *Kent's Comm. p.* 258, *in note.*

In some of the slaveholding States, it has been decided in the courts, that if a slave goes lawfully from such a State into a non-slaveholding State, and acquires a domicil there with his master, or is emancipated there by his master, he becomes emancipated, and ceases to be a slave on his return. But if he be carried there by his master for a temporary purpose, and returns, his state of slavery remains. 2. *Kent's Comm.* 257, *in note.*

In some of the States, where slavery does not exist, it is provided by statute that persons sojourning in the State may keep their slaves there for a limited time; as in New York for nine months, and in Pennsylvania for six months. "These laws are acts of comity on the part of those States, and were not required by the constitution of the United States, nor by the Act of Congress of Feb. 12th, 1793." 2. *Kent's Comm. p*, 257, *in note.*

CHAPTER VI.

OF CERTAIN RIGHTS AND PRIVILEGES EXPRESSLY SECURED TO THE SEVERAL STATES, AND THE CITIZENS THEREOF, BY THE FEDERAL CONSTITUTION.

1. Are there certain rights and privileges expressly granted and secured to each of the States, and the citizens thereof, by the federal constitution?

Yes.

2. Are the provisions of the federal constitution relative to these rights and privileges, designed, with others, for the maintenance of harmony and proper intercourse amongst the States?

Yes.

3. Are there not, thus, obtained by the States severally, and the citizens thereof, certain privileges and benefits, not otherwise to be enjoyed, in regard to their particular municipal laws and regulations respectively?

Yes.

4. Have not the people of each State, under the federal constitution, parted with their power in relation to the subjects of some of these provisions, within the particular territory of the State, for the mutual benefit of the people of all the States?

Yes.

As to the public acts, records and judicial proceedings of each State.

5. What is the provision of the federal constitution?

"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and judicial proceedings shall be proved, and the effect thereof." *Cons. of U. S. Art.* IV. *sect.* I.

6. Is there an act of Congress for carrying this provision into effect?

Yes. Congress, by the Act of May 26, 1790, provided the mode by which records and judicial proceedings should be authenticated, and declared, that they should have such faith and credit given to them in every court within the United States, as they had by law or usage in the courts of the State from whence the records were taken.

Privileges of citizens of each State in the others.

7. What is the privilege of the citizens of each State in the several States?

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. *Cons. of U. S. Art.* IV. *sect.* II. 1.

There has been a difference of opinion, whether free colored persons are *citizens* within this provision of the federal constitution.

In Tennessee, it was adjudged by a court of the State, that a State may constitutionally prohibit free persons of color from removing into the State to reside therein, on the ground that such persons are not *citizens* within the above constitutional provision, for they are not in any of the States entitled to all the privileges and immunities of citizens.

Some of the Southern States having by their laws prohibited, or placed restrictions upon, the ingress and immigration of free colored persons into those States, subjecting them to imprisonment and other penalties upon entering therein; and cases having occurred, in which free colored persons from non-slaveholding States, inhabitants and citizens thereof, have been imprisoned and punished under those laws, their constitutionality has been denied, and much controversy between the States concerned has arisen therefrom.

It would seem, that the question of citizenship, in this connection, depends upon the laws and institutions of the State, of which the individual was an inhabitant and denizen at the time.

As to fugitives from justice.

8. What is the provision of the federal constitution as to fugitives from justice?

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." *Cons. of U. S. Art.* IV. *sect.* II. 2.

9. In what manner is this demand and surrender to be made?

By the Act of Congress, of 1790, the executive of the State in which the offence was committed must make a demand, accompanied with a certified copy of an indictment or affidavit of the committing of the offence, upon the executive of the State, where the offender has fled, who is authorized to cause him to be arrested, and surrendered to the agent of the executive making the demand.

Fugitives from service or labor.

10. What is the provision of the federal constitution as to fugitives from labor or service?

"No person held to labor or service in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such labor or service, but shall be delivered up, on claim of the party to whom such service or labor may be due." *Cons. of U. S. Art.* IV. *sect.* II. 3.

11. Is there any Act of Congress on the subject?

The Act of Congress of 1793 directs in what manner a fugitive from service or labor may be recovered in any State to which he may have fled. *See above, p.* 81.

A republican government in every State.

12. What is the provision of the federal constitution as to the United States guaranteeing to every State a republican government?

"The United States shall guarantee to every State in this Union a republican form of government." *Cons. of U. S. Art.* IV. *sect.* IV.

Protection in each State against invasion.

13. What is the provision in the federal constitution as to the protection of each State against invasion?

"The United States shall protect each of the States against invasion." *Cons. of U. S. Art.* IV. *sect.* IV.

Protection against domestic violence.

14. What is the provision of the federal constitution as to the protection of each State against domestic violence?

"The United States shall protect each of them;—on the application of the Legislature, or of the executive (when the Legislature is not convened) against domestic violence." *Cons. of U. S. Art.* IV *sect.* IV.

CHAPTER VII.

OF CERTAIN GENERAL PRINCIPLES, AND DECLARATIONS OF RIGHT, CONTAINED IN THE FEDERAL CONSTITUTION.

1. Are there, in the constitution of the United States, certain general principles and provisions, restrictive of the powers of the government, and declaratory of the liberty and rights of the people.

Yes.

2. How may the rights of the people protected by these principles and provisions be called and classed?

As the *declared* and *preemptory* rights of the people. *a*

3. What is the authority and force of these principles and provisions?

They are binding on the general government, and the several State governments, in all the departments and branches thereof, and on the people generally.

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a See Part the First, chap. i. Quest. 39.

4. Are they rules of construction by which the federal constitution is to be interpreted, and its meaning ascertained?

Yes.

5. Can there be any law of Congress passed, or any power exercised by the general government, in any of its branches, contrary to, or inconsistent with these principles and provisions?

No.

6. Are laws of the several States, or acts of their governments respectively, in any of their branches, which are contrary to those principles and provisions, unconstitutional and void?

Yes.

7. Are there similar principles and provisions contained in the constitutions of the several States.

Yes; and they are called Declarations or Bills of Rights. *b*

8. Are these principles and provisions contained principally in the amendments to the federal constitution?

Yes.

9. Are there provisions of this nature, in the federal constitution, in the class of powers called "powers *prohibited*, to the general government, and to the several States?"

Yes.

10. Are these provisions of the federal constitution founded on the great principles of civil and political liberty?

Yes.

As to the writ of Habeas Corpus.

11. What is the provision of the federal constitution in regard to the privilege of the writ of *habeas corpus*? *c*

"The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." *Cons. of U. S. Art.* I. *sect.* IX. 2.

As to trial by jury.

12. What are the provisions of the federal constitution as to the right of trial by jury in criminal cases?

"The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where such crime shall have been committed: but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." *Cons. of U. S. Art.* III. *sect.* II. 3.

"In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, of the State and district wherein the crime shall have been committed. *Cons. of U. S. Amendments, Art.* VI.

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b See Part the Second, chapt. iii.

c See, above, chap. iv. ques. 7, for an explanation of the terms.

13. What is the provision of the federal constitution as to the right of trial by jury in civil cases?

"In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise examined in any court of the United States, than according to the common law." *Cons. of U. S. Amendments, Art.* VII.

14. Are there similar provisions in the constitutions of the several States?

Yes. *d*

Security against unreasonable searches and seizures.

15. What is the provision of the federal constitution against unreasonable searches and seizures?

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." *Cons of U. S. Amendments, Art.* IV. *d*

As to warrants.

16. What is the provision of the federal constitution as to the issuing of warrants?

"And no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Cons. of U. S. Amendments, Art.* IV. *d*

Trial on indictment of a grand jury.

17. What is the provision of the federal constitution as to this mode of trial?

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger." *Cons. of U. S. Amendments, Art.* V. *d*

As to the rights of the accused.

18. What provision is there in the federal constitution as to the rights of the accused in criminal prosecutions?

"In all criminal prosecutions, the accused shall enjoy the right; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence." *Cons. of U. S. Amendment, Art.* VI.

"Nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be witness against himself." *Cons. of U. S. Amendments, Art.* V. *d*

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d See Part the Second, chap. iii.

Protection by the process of law.

19. What is the provision of the federal constitution securing to all the protection of the law?

"— Nor shall any person,—be deprived of life, liberty or property, without due process of law." *Cons. of U. S. Amendments, Art* V. *e*

As to excessive bail.

20. What does the federal constitution prohibit in regard to the taking of bail?

"Excessive bail shall not be required. *Cons. of U. S. Amendments, Art.* VIII. *e*

As to fines and punishments.

21. What provision does the federal constitution contain as to fines and punishments?

— "Excessive fines shall not be imposed; nor cruel and unusual punishments inflicted." *Cons. of U. S. Amendments, Art.* VIII. *f*

Security of private property.

22. What is the provision of the law as to private property being taken for public use?

— Nor shall private property be taken for public use, without just compensation." *e* *Cons. of U. S. Amendments, Art.* V.

Right to bear arms.

23. What does the federal constitution provide on this subject?

"A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." *e* *Cons. of U. S. Amendments, Art.* II.

Quartering of soldiers.

24. What is the provision of the federal constitution on this subject?

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law." *Cons. of U. S. Amendments, Art.* III.

Rights and powers reserved to the States respectively, or to the people.

25. What is the general provision in the federal constitution as to the rights and powers reserved to the States severally, and to the people?

"The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *f* *Cons. of U. S. Amend. Art.* X.

"The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people." *Cons. of U. S. Amend. Art.* IX.

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e See Part the Second, chap. iii.

f See Part the First, chap. vi.

CHAPTER VIII.

PRESIDENT OF THE UNITED STATES.

1. In whom is the executive power of the government of the United States vested?

"The executive power shall be vested in a President of the United States of America." *Cons. of U. S. Art.* II. *sect.* I. 1.

2. Is there thus constituted the general executive department of the government, in one person?

Yes.

3. What is the object of the executive department?

To execute the laws of the United States.

4. How is the President appointed.

He is elected by the people.

Qualifications for President.

5. Who may be elected President of the United States?

"No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States." *Cons. of U. S. Art.* II. *sect.* I. 5.

Mode of election.

6. How is the President of the United States elected?

By electors, chosen by the people.

7. What is the number of electors?

Each State appoints a number of electors, equal to the whole number of Senators and Representatives in Congress to which she may be entitled.

8. What are the qualifications of the electors?

"No Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector." *Cons. of U. S. Art.* II. *sect.* I. 2.

9. How are the electors to be appointed?

Each State shall appoint the number of electors, to which it is entitled, in such manner as the Legislature thereof may direct. *Cons. of U. S. Art.* II. *sect.* I. 2.

10. What is the actual mode of appointing electors of President adopted by the States respectively?

It is diverse in the different States; being, either, by the Legislature of the State; by the people in districts; or by the people in the State at large by general ticket.

11. Has Congress power to determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States?

Yes. *Cons. of U. S. Art.* II. *sect.* I. 4.

12. On what day are the electors to be chosen?

On the Tuesday next following the first Monday in November, throughout the United States, by Act of Congress of 1845. Formerly the several States were authorized to fix the days for choosing the electors within the States respectively, within thirty-four days preceding the first Wednesday in December, by Act of Congress of 1792; and different days were fixed for the purpose.

13. On what day are the electors to give their votes?

On the first Wednesday in December.

14. Where are the electors of President to meet for the purpose of giving their votes?

In their respective States, as provided by the laws thereof.

15. What are electoral colleges.

The Presidential electors, met in their respective States, for the purpose of giving their votes.

16. How are the electors, in each State, to vote?

By ballots for President, and by distinct ballots for Vice President, of the United States; one of whom at least shall not be an inhabitant of the same State with themselves. *Cons. of U. S. Amend. Art.* XII.

17. How is the result of their votes to be declared?

Certified lists of the persons voted for, in the several colleges of electors, are to be transmitted to the President of the Senate of the United States, who shall, in the presence of the Senate and House of Representatives of the United States, open all the certificates, and the votes shall be counted.

18. Is the majority of the votes of the whole number of electors, in the several States, necessary to elect a President?

Yes.

19. If no person have a majority of the votes of the whole number of electors, how is the President to be elected?

The House of Representatives of the United States is to elect a President from the three persons having the highest number of votes of the electors; the votes of the Representatives to be taken by States; and a majority of all the States to be necessary to a choice.

20. What is the provision of the federal constitution as to the mode of election of President, by the electors, or by the House of Representatives of the United States?

"The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists, of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed, to the seat of government of the United States, directed to the President of the Senate: the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed. And if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice."

21. If the choice devolve upon the House of Representatives, and they fail to make a choice before the 4th of March next following, who is to act as President?

The Vice President. *Cons. of U. S. Amendment*, XII.

22. What day is fixed by Act of Congress for opening and counting the votes of the electors; and, in case of its being necessary, for the election of President by the House of Representatives, and of Vice President by the Senate, of the United States?

The second Wednesday in February, after the appointment of electors.

Duration of office.

23. What is the term of office of the President of the United States?

Four years; commencing the fourth day of March after his election. This commencement of the term is provided by Act of Congress, and recognized by the XIIth Art. of the Amendments to the Constitution of the United States.

Oath of office.

24. What is his oath of office?

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States." *Cons. of U. S. Art.* II. *sect.* I. 8.

Compensation.

25. What is the provision of the federal constitution as to the compensation of the President of the United States?

"The President shall, at stated times, receive for his services a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them." *Cons. of U. S. Art.* II. *sect.* I. 7.

26. What compensation does the President receive?

Twenty-five thousand dollars, per year; by Act of Congress.

Power as to the Army and Navy.

27. What is the power of the President as to the Army and Navy of the United States?

"The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States." *Cons. of U. S. Art.* II. *sect.* II. 1.

Power as to the militia.

28. What power has the President to call forth the militia?

By Act of Congress, of 1795, the President is authorized to call forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions. *a*

29. Is the President to be exclusive judge as to when these exigencies arise, on the occurrence of which the militia may be called forth?

The Supreme Court of the United States has decided that the President is the sole and exclusive judge.

30. When is the militia to be considered as "in the service of the United States?"

Not until they have reached the place of rendezvous in pursuance of the call of the President; before which they are under the orders of the State governments respectively; as adjudged by the Supreme Court of the United States.

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a See under the head "Congress &c," as to the militia, p. 63.

Consulting power.

31. May the President require the opinions of the Heads of the Executive Departments?

"He may require the opinion, in writing, of the principal officer in each of the executive departments, on any subject relating to the duties of their respective offices." *Cons. of U. S. Art.* II. *sect.* II. 1.

Power of pardon.

32. Has the President power to pardon offences?

"He shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." *Cons. of the U. S. Art.* II. *sect.* II. 1.

33. May he grant pardons for such offences before, as well as after conviction therefor?

Yes.

Power as to treaties.

34. Has the President power to make treaties with foreign nations?

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." *Cons. of U. S. Art.* II. *sect.* II. 2.

35. Of what force are treaties thus made?

All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." *Cons. of U. S. Art.* VI. 2.

36. Are the several States prohibited from making treaties?

"No State shall enter into any treaty, alliance or confederation." *Cons. of U. S. Art.* I. *sect.* X. 1.

"No State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power." *Cons. of U. S. Art.* I. *Sect.* X. 2.

Power of appointment.

37. What power has the President to make appointments to office?

"The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." *Cons. of U. S. Art.* II. *sect.* II. 2.

38. Does the President commission all officers of the United States?

"He shall commission all the officers of the United States." *Cons. of U. S. Art.* II. *sect.* III.

And this includes all such officers, whether appointed by him, or not.

39. What is the power of the President as to filling vacancies in offices, during the recess of the Senate?

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session." *Cons. of U. S. Art.* II. *sect.* II. 3.

40. Has the President power to create offices?

No.

41. Has the President power to remove officers, who were, by and with the advice and consent of the Senate, appointed by him?

The power of removal has not been expressly given by the federal constitution to the President; the general opinion, however, has been that it is necessarily implied in the power of appointment, where the contrary is not provided in terms; and the practice has been in conformity thereto.

The President, has, thus, the power of *creating* vacancies and appointing officers to fill them up. Officers so appointed in the recess of the Senate, continue in office until the next session of Congress.

42. Are there any officers of the United States who hold their offices for life during good behavior?

None but judicial officers, who cannot be removed except by impeachment.

43. Do all officers of the United States, appointed by him by and with the advice and consent of the Senate, hold their offices, at the will of the President as to their removal by him, except where it is otherwise provided by the constitution?

Yes; under the construction and practice above stated.

44. With regard to all offices, the appointment to which is confided to the President by the federal constitution, can Congress give any duration of office which is not subject to his power of removal?

No.

45. Under the power of Congress as to the appointment of "inferior officers," may it not prescribe the term of office, and the manner in which the removal, as well as the appointment, shall be made?

Yes. *Cons. of U. S. Art.* II. *sect.* II. 2.

Power as to legislation.

46. What is the power of the President as to bills passed by Congress?

He has the power of approving or disapproving of every bill, and joint order, resolution or vote, passed by Congress, (except on a question of adjournment;) if approved and signed by him, it becomes a law; if not approved by him, it can only become a law by being

reconsidered and re-passed by two-thirds of both Houses of Congress in the manner prescribed by the federal constitution. c

47. What is the President's power of disapproving a bill called?
His *veto* power. The word *veto* means "I forbid."

Power to convene Congress.

48. What power has the President as to convening Congress?
"He may, on extraordinary occasions, convene both Houses of Congress, or either of them." *Cons. of U. S. Art.* II. *sect.* III.

Power to adjourn Congress.

49. What power has the President as to adjourning Congress?
"He may;—in case of disagreement between them (the two Houses of Congress) adjourn them to such time as he shall see proper." *Cons. of U. S. Art.* II. *sect.* III.

Communications to Congress.

50. What is the duty of the President as to giving information to Congress of the state of the Union?
"He shall, from time to time, give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." *Cons. of U. S. Art.* II. *sect.* III.

Reception of Ambassadors.

51. What is the power of the President as to receiving ambassadors?
"He shall receive ambassadors, and other public ministers." *Cons. of U. S. Art.* II. *sect.* III.

Execution of the laws.

52. What is the general duty of the President as to the execution of the laws?
"He shall take care that the laws be faithfully executed." *Cons. of U. S. Art.* II. *sect.* III.

53. Does this clause of the federal constitution confer on the President any specific power not otherwise vested in him?
No.

Impeachment.

54. What is the provision of the federal constitution as to the impeachment of the President of the United States?
"The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." d *Cons. of U. S. Art.* II. *sect.* IV.

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c See more fully under head "Congress of the United States," p. 71.
d See on the subject of impeachment under head of Senate of U. S. chap. iii.

Vacancy in the office.

55. In case of a vacancy in the office of President, who is to act as the President?

"In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice President; and the Congress may, by law, provide for the case of the removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected." *Cons. of U. S. Art.* II. *sect.* I. 6.

56. Is there any Act of Congress on the subject?

The Act of Congress of 1792, provides that, in case also of such a vacancy of the office of Vice President, the President *pro tempore*, of the Senate first, and then the Speaker of the House of Representatives of the United States, shall act as President.

57. What provision is there for the case of a failure to elect either a President or Vice President of the United States?

The Act of Congress has provided that there shall be a new election of these officers, in such an event. There is doubt whether Congress has constitutional power to make such a provision.

VICE PRESIDENT OF THE UNITED STATES.

58. How is the Vice President of the United States appointed?

He is elected by Electors chosen by the people, in the same manner as the President; or in case of their failure so to elect, by the Senate of the United States. *Cons. of U. S. Art.* II. *sect.* I; and *Amendments, Art.* XII.

59. What are the qualifications for the office of Vice President?

"No person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States." *Cons. of U. S. Amend. Art.* XII.

60. What is the term of office of the Vice President?

Four years; commencing from the fourth day of March after his lection?

61. What is his compensation?

Five thousand dollars, per year, by Act of Congress.

62. What does the federal constitution provide as to his being president of the Senate of the United States?

"The Vice President of the United States shall be the president of the Senate, but shall have no vote, unless they be equally divided." *Cons. of U. S. Art.* I. *sect.* III. 4.

63. When may the office of President devolve upon the Vice President?

"In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve upon the Vice President." *e* *Cons. of U. S. Art.* II. *sect.* I. 6.

"And if the House of Representatives shall not choose a President, whenever the right of choice devolves upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President." *Cons. of U. S. Amendments, Art.* XII.

64. May the Vice President be impeached?

Yes. *Cons. of U. S. Art.* II. *sect.* IV.

65. What provision is made by law for the case of a failure to elect either a President or a Vice President?

The Act of Congress of 1792 provides that there shall be a new election.*f*

It is usual for the Vice President to withdraw from the Senate previously to the adjournment of the session, in order to afford an opportunity to that body to choose a President *pro tempore;* so that there may be such an officer during the recess of the Senate.

If the Vice President succeed to the office of President, he continues in it until the expiration of the term for which the President was elected; unless in case of a temporary disability of the President.

In case of a vacancy in the office of Vice President only, by resignation, death, removal or disability, a Vice President cannot be elected until the regular period. There is no provision in the constitution for such an election.

In case of vacancies in the offices both of President and Vice President, by removal, death, resignation or inability, the person appointed by Act of Congress continues to act as President until the disability be removed, or a new election of President; provision for holding such election being made by Congress. The Act of Congress also provides that, where there has been a failure to elect, in the manner prescribed by the constitution, either a President or Vice President, a new election shall be held for those officers before the regular period; the person appointed by law continuing to act as President in the mean time.

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e As to the provision in the case of the removal, death, &c., of both the President and Vice President, see this chapter, head "President," p. 96.

f See title "President," in this chapter, p. 96.

EXECUTIVE OFFICERS OF THE UNITED STATES.

66. How may all officers of the general government be classed?

Into judicial and executive; and the executive into civil and military.

67. How are offices under the United States created?

Offices not created by the federal constitution, can be established only by act of Congress.

Appointment, and removal.

68. How are the subordinate executive officers of the United States appointed?

The President of the United States, "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, in the Courts of law, or in the heads of departments." *Cons. of U. S. Art.* II. *sect.* II. 2.

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session." *Cons. of U. S. Art.* II. *sect.* II. 3.

69. Are all executive officers, appointed by the President, liable to be removed from office at his pleasure?

Yes. *g*

Commissions.

70. How are all officers of the United States commissioned?

By the President of the United States." *Cons. of U. S. Art.* II. *sect.* III.

Religious tests.

71. What is the provision of the federal constitution as to religious tests?

"No religious test shall ever be required as a qualification to any office, or public trust, under the United States." *Cons. of U. S. Art.* VI. 3.

Oath of office.

72. Are all the executive officers of the United States required to be bound by oath to support the federal constitution?

"And all executive and judicial officers, both of the United States and of the Several States, shall be bound, by oath or affirmation, to support this constitution." *Cons. of U. S. Art.* VI. 3.

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g See this subject under the head "President of the United States," p. 93.

Impeachmeat. *h*

73. What is the provision of the federal constitution as to the impeachment of officers of the United States?

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." *Cons. of U. S. Art.* II. *sect.* IV.

74. What officers are meant by civil officers in this provision?

All public officers, except military and naval officers, and members of Congress.

Executive Departments.

75. What subordinate executive departments of the general government are there?

The department of State, the principal officer of which is the Secretary of State; the department of the treasury under the Secretary of the Treasury; the department of war under the Secretary of War; the department of the navy under the Secretary of the Navy; and the post office department under the Post Master General. These officers are called the Heads of Departments.

76. How are the Secretaries of Departments and the Post Master General, appointed?

By the President, with the advice and consent of the Senate of the United States; and they are removable by him at his pleasure. In case of a vacancy the President may authorise any person to perform the duties of Head of Department, until a successor be appointed, or such vacancy be filled.

77. What officers constitute what is called the cabinet of the Preident of the United States?

The Secretaries of Departments and the Attorney General. *i*

78. Have any of the Secretaries or Heads of Departments a seat in Congress?

No.

79. How were these departments established?

They are recognized in the constitution of the United States, and were established and defined by Acts of Congress.

80. Were these departments established in order to aid the President of the United States in the discharge of the various branches of his Executive functions?

Yes.

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h On impeachment generally, see head "Senate of the United States" p. 40. chapt. iii.

i As to Attorney General, see Judiciary of the United States, further on, chap. ix. quest. 40.

81. Do these officers perform the duties of their departments, respectively, under the instructions and directions of the President?

Yes, generally. In some instances, however, there are duties specially imposed upon them by Acts of Congress, to be performed by them independently and in their discretion.

State Department.

82. What are the duties, in general, of the Secretary of State?

It is the duty of the Secretary of State, through his department, to keep the custody of the originals of all the laws, treaties, and other public documents of the United States; to record the same; to furnish authentic copies of the same when duly required; to keep the great seal of the United States, and to affix it, with his signature, to all commissions and other documents requiring it, there being issued from this department commissions to all civil officers of the United States, appointed by the President, by and with the advice and consent of the Senate, or by the President alone; to conduct the political and civil relations of the government with foreign powers, as to negotiating treaties and other regulations and arrangements therewith, and in reference to the memorials or applications of foreign ministers, agents, or persons, either in this country, or abroad through the ministers of the government in foreign countries, as ambassadors, envoys, *charges des affaires*, or consuls; and to perform various specific duties, relative to the department, and under the direction of the President of the United States. The patent office is a branch of this department.

War Department.

83. What are the duties, in general, of the Secretary of War?

He has the general superintendence, under the direction of the President, of the military affairs of the government. The management of the government with the Indian tribes, called Indian relations, is a branch of this department.

Treasury Department.

84. What are the duties, in general, of the Secretary of the Treasury?

It is his duty, in general, to manage the fiscal operations of the government; having cognizance of all matters connected with the national revenue, and the supervision of the custom houses, and their officers. He is required by law, to make a report annually to Congress of the fiscal affairs of the nation, containing a statement of receipts and expenditures, and an estimate of future revenue. The General Land Office is also a branch of this department.

In the organization of this department there are various subordinate officers, having distinct offices or bureaus;

1. Five or more *Auditors*, whose business it is to examine all accounts with the treasury and certify the balances; and for this purpose certain classes of accounts are assigned to each auditor.

2. There are two or more *Comptrollors*, whose duty it is to revise the accounts certified by the different auditors, make a record of the balances, and certify them to the Register.

3. It is the duty of the *Register* to preserve these accounts thus certified to him; and also to keep an accurate account of all the receipts and expenditures of the government.

4. It is the duty of the Treasurer to receive and keep the public money, until duly ordered to disburse it; which can only be upon warrants drawn by the Secretary, countersigned by the proper Comptroller and Auditor and recorded by the Register.

5. It is the duty of the *Solicitor* of the treasury to be the legal adviser of the department, and to superintend all litigation connected therewith.

Navy Department.

85. What is the duty, in general, of the Secretary of the Navy?

He has the general superintendence of the Navy of the United States, its operations and affairs.

Post Office Department.

86. What are the duties in general, of the Post Master General?

To make contracts for carrying the mail on the routes established by Acts of Congress, to prescribe regulations for the various Post Offices throughout the country, to superintend the receipt and collection of the rates of postage on letters and papers, as fixed by law, and the business of the department generally.

87. How are the subordinate officers, clerks and agents in these departments appointed?

The principal officers and clerks are appointed by the Heads of the departments respectively, under the direction of the President of the United States. In some instances the inferior clerks and agents are appointed by them at their discretion.

Ambassadors.

88. Who are ambassadors?

Ministers of government, appointed by the President, by and with the advice and consent of the Senate, to reside in foreign countries, through whom the correspondence of our government with foreign powers is conducted, treaties are negotiated and matters connected with our foreign political relations are transacted. *Ministers Plenipotentiary*, and *Envoys* are similar officers accredited to foreign governments, on special occasions and for particular purposes. *Charges des affaires* are such of an inferior grade, through whom are transacted matters of less importance and of an ordinary nature, with other nations.

89. Are there ambassadors and other such ministers accredited, by foreign powers, to our government?

Yes. They are received and acknowledged by the President of the United States, and generally reside at the Seat of Government.

Consuls.

90. Who are Consuls?

They are officers appointed by the President, by and with the advice and consent of the Senate, residing in foreign nations and the chief cities and towns thereof, to attend to the commercial interests of our country, and to the rights of our merchants, seamen, and citizens, residing or visiting there, and through whom any correspondence of our government with the functionaries of foreign nations on these subjects is carried on. The acknowledgement and proof of commercial papers and documents, of citizenship made out by them, and various other matters relative to trade and commerce performed by them. There are Consuls in this country appointed by foreign governments.

Districts of the United States.

91. What territorial divisions have been adopted for administering and executing the laws of the United States?

Districts, called judicial districts, consisting each of one State, or parts thereof. These divisions are also used for military purposes.

92. What officers of the United States are in each district?

A judge of the District Court of the United States, a District Attorney, and a Marshal, with his deputies. *j*

j For a notice of these officers, see "Judiciary of the United States," further, chapt. ix.

CHAPTER IX.

JUDICIARY OF THE UNITED STATES.

1. What provision is there in the federal constitution as to the judicial power of the United States?

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." *Cons. of U. S. Art.* III. *sect.* I.

2. Do these Courts constitute the judiciary or judicial department of the general government?

Yes.

3. What is the nature in general of the powers and duties of the judicial department of the general government?

It is that branch of the general government to which is intrusted the power of applying and expounding the laws, in the administration of justice, according to the jurisdiction given to it.

4. Is it a co-ordinate department of the general government, in the exercise of its proper powers independant of the other departments thereof?

Yes.

5. Has the judicial department the power, in the exercise of its jurisdiction, of expounding the federal constitution, and thereby determining the validity or invalidity of the laws of Congress, and of the acts and proceedings of the executive department of the general government?

Yes.

6. Has the judicial department, also, the power of thus deciding upon the validity of the constitutions and laws of the States severally, in reference to the federal constitution. *a*

Yes.

7. Is the decision of the Supreme Court of the United States in such cases, involving the interpretation of the federal constitution, final and conclusive?

Yes.

8. Is the judicial department, then, an important constitutional check upon the other branches of the general government, and the means of preventing them from transcending their proper powers; as also of keeping the States severally within their peculiar spheres, as parts of the system of the Union?

Yes.

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a See, same chapter, quest. 10. 30.

9. Do not the highly important functions of the judiciary render it necessary that its independance should be secured by constitutional provisions?

Yes.

Jurisdiction in general.

10. What is the provision of the federal constitution as to the cases to which the judicial power of the United States shall extend?

"The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty or maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of differant States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects." *Cons. of U. S. Art.* III. *sect.* II.

11. What is meant by cases of *admiralty* and *maritime* jurisdiction?

The words admiralty and maritime are here synonymous. The cases included in this provision, are such as relate to the *high seas*, whether crimes, captures, injuries, or contracts. The high seas, including all places where the tide ebbs and flows, not being within any county, constitute the grand highway of nations; and hence the propriety of referring all questions, having reference to this locality, to the national judiciary. *b*

Courts.

12. What are the courts of the United States, established by Acts of Congress in pursuance of the Constitution?

The Supreme Court of the United States, Circuit Courts, and District Courts.

Judges.

13. How are the judges of the several courts of the United States appointed?

The President shall "nominate, and by and with the advice and consent of the Senate, appoint judges of the Supreme Court, and all other officers of the United States, whose appointment are not herein otherwise provided for, and which shall be established by law." *Cons. of U. S. Art.* II. *sect.* II. 2.

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b Walker's Introduction to American Law, p. 117. 118.

Tenure of office.

14. How do the judges of the Courts of the United States hold their offices?

"The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior." *Cons. of U. S. Art.* III. *sect.* I.

15. Do the judges, then, hold their offices for life, unless removed by impeachment?

Yes.

16. Is this what is called their tenure of office?

Yes.

Compensation.

17. What is the provision of the federal constitution as to the compensation of the judges of the Courts of the United States.

"The judges both of the Supreme and inferior courts, shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." *Cons. of U. S. Art.* III. *sect.* I.

18. Are the provisions in the federal constitution, in relation to their tenure of office and compensation, intended to secure their independence and integrity, in the discharge of their duties?

Yes.

19. What salaries do they receive, at the present time?

By Act of Congress, the Chief Justice of the United States receives five thousand dollars, per annum; the Associate Judges of the Supreme Court, each four thousand dollars, per annum; and the district judges, from one to three thousand dollars, per annum, each, according to their locations.

Supreme Court of the United States.

20. How is the Supreme Court of the United States organized?

It consists of nine judges; the Chief Justice of the United States, and eight Associate Judges.

21. How often, and where does it, sit?

It holds but one session annually, at the seat of the general government.

22. What is its jurisdiction?

Its jurisdiction is both original and appellate.

23. What is meant by the jurisdiction of a Court?

When a case is within the power of a court, it is said to have jurisdiction of it.

24. What is meant by *original* jurisdiction?

A court has original jurisdiction of a case, when the first proceedings in it may be commenced in that Court.

25. What is meant by *appellate* jurisdiction?

A court has appellate jurisdiction of a case, when the proceedings in it must be commenced in some other court, and may be thence transferred, for revision and correction, to that court.

26. What is meant by *exclusive* jurisdiction, and *concurrent* jurisdiction?

A court is said to have exclusive jurisdiction of a case, when it cannot be brought before any other court; and to have concurrent jurisdiction, when the case may be also brought before some other court.

27. In what cases has the Supreme Court of the United States original jurisdiction?

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction." *Cons. of U. S. Art.* III. *Sect.* II. 2.

28. Has the Supreme Court *exclusive* original jurisdiction in any of the cases above specified?

Yes, in all those cases; except in suits by a State against one or more of its citizens, or against citizens of other States or aliens; and except in suits brought by ambassadors or other public ministers, or in which a Consul or Vice Consul shall be a party. 1, *Kent's Comm. p.* 298.

29. What appellate jurisdiction has this court?

It revises, by writ of error or by appeal, all final judgments and decrees, in civil actions, of the Circuit Courts of the United States, where the value in controversy exceeds two thousand dollars. It has no appellate jurisdiction in criminal cases; but in all cases, civil and criminal, where the judges of the Circuit Court differ in opinion, so as to prevent a decision therein, the point of disagreement shall be certified up to it for determination.

30. Has the Supreme Court of the United States appellate jurisdiction in any actions brought in the State Courts?

By the Judiciary Act of Congress, the final judgments and decrees of the highest court of law or equity in any State, may be revised by the Supreme Court of the United States on *writ of error*, in the following classes of cases, viz:

Where the validity or construction of the federal constitution, laws, or treaties, or of any commission or authority derived therefrom, shall be drawn in question, and the decision shall be against it.

Where the validity of a State constitution, law or authority, shall be drawn in question, on the ground of repugnancy to federal power, and the decision shall be in its favor.

Circuit Courts of the United States.

31. How are the Circuit Courts of the United States organized?

The Circuit Courts are held each by one of the judges of the Supreme Court, and the judge of the District Court of the United States for the particular district.

32. How have judicial districts and circuits been established?

By Act of Congress, the United States have been divided into judicial districts, consisting of one State or more, in which a District Court of the United States is held by a district judge; and circuits, formed of several districts, in each of which a Circuit Court is held by one of the judges of the Supreme Court and the District Judge.

33. How often are the Circuit Courts held?

Twice a year, in each district.

34. What is the jurisdiction of the Circuit Courts?

They have *original* jurisdiction, concurrent with the courts of the several States, of all civil suits, at law and equity, when the value in dispute exceeds five hundred dollars, and the United States are plaintiffs; or one party is an alien; or the suit is between a citizen of the State where it is brought and a citizen of another State; or against a citizen of the same State, claiming lands under a grant from another State. Suits, in such cases, commenced in the State courts, may, at the instance of the defendant, be removed into the Circuit Courts. They also have original jurisdiction of all suits involving copy rights and patents; and of all crimes punishable under the federal authority. The criminal jurisdiction is final unless there is a disagreement between the judges on a point of law, which is to be certified to the Supreme Court for decision.

The Circuit Court has *appellate* jurisdiction from the District Court by writ of error or appeal, in the following cases; first, in civil actions at law, where the value in dispute exceeds fifty dollars, by writ of error; and, secondly, in admiralty cases, where the value in dispute exceeds three hundred dollars, by appeal. It has no appellate jurisdiction in cases of equity, or in criminal cases. In these cases of appellate jurisdiction in the Circuit Court, if the Judges differ, the opinion of the judge of the Supreme Court prevails, as the cases cannot be certified into the Supreme Court.

District Courts of the United States.

35. How are the District Courts of the United States organized?

They are held in the judicial districts respectively, by a district judge appointed for each district.

36. How have the judicial districts been established?

The United States have been divided, by Act of Congress, into districts, consisting of a State, or territory, or part thereof, for the purposes of the administration of justice and the execution of the laws.

37. What is the jurisdiction of the District Courts of the United States?

They have jurisdiction of the following cases, viz; first, by *exclusive original* cognizance, of all civil cases, of admiralty and maritime jurisdiction; secondly, of all seizures, penalties, and forfeitures, under the laws of the United States; thirdly, concurrently with the Circuit Courts of the United States, and the State Courts, of all injuries by tort in violation of the law of nations, or of a treaty of the United States, when an alien sues; fourthly, concurrently with the Circuit Court of the United States and the State Courts, of suits brought by the United States, when the value in dispute does not exceed one hundred dollars; fifthly, exclusively of the State Courts, of suits against Consuls, Vice Consuls, suits to repeal patents and concerning captures; sixthly, of crimes and offences, cognizable under the authority of the United States, where the punishment does not exceed a fine of five hundred dollars, or imprisonment for six months.

Officers of the Courts of the United States.

38. What principal officers of the Courts of the United States are there?

Attorneys and Counsellors at law, clerks, and marshals.

Attornies and Counsellors at law.

39. Who are attornies and counsellors at law?

Persons learned in the law, admitted by the Courts, according to their rules, to assist parties in their pleadings, and in the conduct of their causes. They are officers of the Courts, entitled to certain privileges, and subject to be suspended from practice, and to other punishment, for misbehaviour in office.

Attorney General of the United States.

40. How is the Attorney General of the United States appointed?

By the President of the United States, by and with the advice and consent of the Senate.

41. What are his duties?

In general, to prosecute and conduct all suits in the Supreme Court of the United States in which the United States are concerned; and to give his advice and council on questions of law, when required by the President, or heads of departments.

District Attornies of the United States.

42. What officers are these?

They are attornies at law for the United States, appointed, by the President, by and with the consent of the Senate, one for each judicial district, to prosecute indictments and charges against all delinquents for crimes and offences cognizable under the authority of the United States, and to act for the United States, in all civil suits in which they are concerned.

Marshals.

43. How are marshals of the United States appointed?

Marshals are appointed, one for each judicial district, by the President, by and with the advice and consent of the Senate, for the term of four years; removable at the pleasure of the President.

44. What are their duties and powers?

In general, their duties and powers are analogous to those of sheriffs in the several States. It is their duty to attend the District and Circuit Courts of the United States in their districts respectively, and to execute within their districts all writs, precepts, process, sentences and judgments of the Courts of the United States. There are various special duties assigned them by law.

45. May the marshals appoint deputies under them?

They may appoint deputies, at their pleasure, and remove them, in like manner; being responsible for their official acts. They generally appoint a deputy for each county in their districts respectively. The deputy marshals are also, by Act of Congress, removable at the plea sure of the Circuit or District Courts.

46. Are the marshals generally assigned to take the census of the United States, as directed by Congress?

Yes.

Gaols and prisons.

47. How may the marshals of the United States secure and con fine persons arrested by them, or committed to their charge?

They are directed, by Act of Congress, to deliver their prisoners to the keepers of one of the gaols of the State, where the Legislature thereof has made it the duty of the gaoler to receive them; but otherwise, the marshal may, under the direction of the district judge, provide his own place of custody.

Jurisdiction of State Courts and magistrates under Acts of Congress.

48. Have the State courts and magistrates, been vested, by various Acts of Congress, with jurisdiction and powers in prosecutions, suits and proceedings under Acts of Congress?

Yes.

49. Are they obliged, or can they be compelled, by the Acts of Congress to exercise such jurisdiction or powers?

No; they may do so, when authorized by the laws of the State, but cannot be compelled by Act of Congress.

THE UNITED STATES
CONSTITUTIONAL MANUAL.

PART THE SECOND.

Of the Governments of the several States.

CHAPTER I.

OF THE GOVERNMENTS OF THE STATES.

1. Has each State a government of its own?

Each State has a government of its own, in its form and powers consistent with the provisions of the federal Constitution.

2. What is the nature, in general, of the government of the Union, and of the governments of the several States?

The federal government is that of the people of the United States as a *nation*, for *national* purposes; and the several States have separate governments, for all other matters relating to them respectively. *a*

In our general republic, there are combined the system of the federal government and that of the governments of the several States, all fitted to operate harmoniously in their proper spheres, for a common end.

"In the compound republic of America, the powers surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself." *b*

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a As to the relation between the general and State governments, and the powers of each, see Part the Frst, chap. i.

b The Federalist, No. 4.

3. Does each citizen, then, owe obedience both to the general government, and to the government of his State?

Yes.

4. What is the form of government of each State?

A representative democracy; each State being a republic.

5. What does the federal Constitution provide as to the form of government of each State?

"The United States shall guarantee to every State in this Union a republican form of government." *Cons. of U. S. Art.* IV. *sect.* IV.

6. What is the general principle upon which the governments of the States severally are founded?

That the supreme power is in the people; and that they have a right to establish a government, and make laws for themselves, as they see proper.

7. What is the principle of representation in the governments of the States?

It is that principle by which the people exercise their supreme power by their representatives or delegates.

8. When did the several States become free and independent?

Those that originally formed the Union, having been colonies of Great Britain, became free and independent by their Declaration of Independence on the fourth day of July 1776: And the other States were admitted into the Union as such, under the federal Constitution.

9. Has each State a written constitution of government?

Yes.

10. How was the government of each State established?

By the people thereof, forming a written constitution for their government. c

11. What is the relation of the several States to the Union?

The people of the United States, as individuals, form the Union; and each State, in its collective capacity, is represented in the federal government and recognized and regarded as such, and its agency employed for many purposes, under the federal constitution and laws.

12. Have the people of each State parted with a portion of their supreme power to the Union, by the federal constitution?

Yes.

13. What powers have the people of the States severally parted with to the Union, so that they cannot exercise them in the State governments?

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c See Part the First, chap. i. p. 18.

All the "powers delegated to the United States" and vested in them exclusively, or that may be exercised by them exclusively; or "prohibited to the States severally;" by the federal constitution.

14. Are all the "powers not delegated to the United States, nor prohibited to the States" severally, by the federal Constitution, reserved to the people of the several States?

Yes.

15. Can the people of any State confer upon its government powers prohibited to the several States by the federal Constitution?

No.

16. Are all acts of the people or government of any State, and laws passed by them, which are contrary to the provisions of the federal constitution, or the laws of Congress in pursuance thereof, unconstitutional and void?

Yes: The federal constitution, and the laws of Congress passed in pursuance thereof, are the supreme laws of the land, and any law contrary thereto is unconstitutional and void.

17. Has a State authority, either by a constitutional law, or by an act of ordinary legislation, to declare void a law of the United States, or suspend its operation within the territorial jurisdiction of the State?

No.

18. Is any State, then, completely sovereign?

No; it is not, in reference to the Union, and the federal government.

19. Is each State sovereign and independent in the exercise of its powers consistently with the provisions of the constitution of the United States?

Yes.

20. What are the objects in general of the federal government and of the several State governments, respectively?

The object of the federal government is to unite the people of all the United States into one nation, for national purposes; and that of the several State governments, to regulate their local and municipal affairs.

21. Has each of the States formed a written constitution of government, in accordance with the federal constitution?

Yes.

22. Are the States *foreign* to each other?

No; they are parts of the same nation.

23. Have the States severally, by the federal constitution, entered into certain obligations to each other, in regard to their municipal laws and internal relations respectively?

Yes. "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." *Cons. of U, S. Art.* IV. *sect.* I.

The citizens of each State are entitled to all privileges and immunities of citizens in the several States. *Cons. of U. S. Art.* IV. *sect.* II. 1. Fugitives from justice, or from labor, escaping into other States, are to be delivered up. *Cons. of U. S. Art.* IV. *sect.* II. 2, 3.

The States cannot enter into any treaty, alliance or confederation; or into any agreement or compact with each other; or adopt commercial regulations with respect to each other. *Cons. of U. S. Art.* I. *sect.* X. 1. 2. As to these subjects, see the proper heads, in Part the First, of this work.

24. Can any State secede at pleasure from the Union?

No State nor any number of the States less than three-fourths, can, by virtue of any right reserved in the federal constitution, secede at pleasure from the Union. The federal constitution may be amended by three-fourths of the States, as provided in it. *d*

25. Is there a great similarity in the constitutions of the several States, and the structure of their particular governments?

Yes.

26. Does the structure of the general government, in the organization of its different departments, resemble that of each State?

Yes.

27. How may the provisions of the constitution of each State be classed?

Under the following heads, namely; first, those which relate to the organization of the legislative department; secondly, those which relate to the organization of the executive department; thirdly, those which relate to the organization of the judicial department; fourthly, those which define and limit the powers delegated, and the powers reserved.

28. Is the government of each State, then, one of limited powers?

Yes; its powers are limited by the federal constitution, and, as is generally the case, by the provisions of the constitution of the State.

29. How are the powers of the government of a State granted, or limited, in its constitution?

Power is granted in general terms; and it is limited by specific limitations or prohibitions.

30. What is the rule of construction, then, as to the powers of the governments of the States, under their constitutions respectively?

That the grant of power is general, and the prohibition special; or that all powers are to be considered as conferred, which are not expressly or incidentally prohibited. This is the reverse of the theory of the federal constitution. *e*

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d See Part the First, chap. i.

e See Part the First, chap. i. ii.

31. Are there powers which may be exercised concurrently by the general government and the several State governments?

Yes; and they are called concurrent powers. *f*

32. How are the powers of government generally distributed, in in each State?

Among three departments, the *legislative department*, the *executive department*, and the *judiciary department*.

33. Is it the peculiar policy of our general and State governments, that the departments of government in each are distinct and independent of each other?

Yes.

34. Are these departments *co-ordinate* branches of government, with separate powers and duties, in the exercise of which they act independently of each other?

Yes.

By the distribution of the powers of government among these departments, each is constituted, in its proper sphere, the immediate and co-equal representative of the people of the State, as the direct source of its authority, and the sole ultimate depository of the supreme power.

35. How are questions as to the powers of government and the constitutionality of laws, to be finally determined, in each State?

By the judiciary thereof; there being an appeal from the court of the last resort of the State to the Supreme Court of the United States, in cases involving the construction of the federal constitution, or the laws or treaties of the United States. *g*

36. Have the people of each State power to alter the form of government and the constitution thereof?

Yes.

37. Is there generally a mode provided in the constitution of each State for altering or amending it?

Yes.

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f See part the First, chap. i. iii.

g See part the First, chap. viii. ii.

CHAPTER II.

OF THE MUNICIPAL LAW, IN GENERAL, OF THE SEVERAL STATES.

1. What is municipal law?

Municipal law is the rule by which particular nations, communities, or districts, are governed. It is otherwise defined to be, a rule of civil conduct prescribed by the supreme power in a State.

2. How may municipal law be divided?

Into written and unwritten law, or statute and common law.

3. What is written or statute law?

It is the express written will of the legislature, rendered authentic by certain prescribed forms and ceremonies.

4. Of what does the written law, in this country, consist?

Of constitutions, treaties, and statutes. The written law in a particular State includes the constitution of the United States, the constitution of the State, the acts of Congress, and the acts of the Legislature of the State.

5. What is a constitution?

The written declaration of the will of the people, defining the form and powers of government. *a* The federal constitution is the declaration of the sovereign will of the people of the United States, uniting the people of the United States into one nation, for all national purposes *a*; and the constitution of each of the States is the declaration of the sovereign will of a portion of the same people, uniting for municipal purposes, and constituting a State. *b*

"The true view to be taken of our State constitutions is, that they are forms of government, ordained and established by the people in their original and sovereign capacity, to promote their own happiness, and permanently secure their rights, property, independence, and common welfare.

The language of nearly every one of the State constitutions is, that the people do ordain and establish this constitution; and where these terms are not expressly used, they are necessarily implied in the very substance of the frame of government. They may be deemed compacts, in the sense of their being founded on the voluntary consent or agreement of a majority of the qualified voters of the State. But

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a See Part the First, chap. i. ii. &c. as to this definition, and the constitution of the United States.

b See Part the Second, chap. i.

they are not treated as contracts and conventions between independent individuals and communities, having no common umpire. In general the import is, that the people ordain and establish, that is, in their sovereign capacity meet and declare, what shall be the fundamental LAW for the government of themselves and their posterity. The constitution of a State is, then, to be treated as a fundamental *law*, and not as a mere contract of government, during the good pleasure of all the persons who were originally bound by it, or assented to it. A constitution is in fact a fundamental law, or basis of government, and falls strictly within the definition of law.

A State constitution is no further to be deemed a compact than that it is a matter of consent by the people, binding them to obedience to its requisitions; and its proper character is that of a fundamental law, prescribed by the will of the majority of the people of the State, (who are entitled to prescribe it,) for the government and regulation of the whole people." I *Story on the Cons. p*, 306—317.

6. What is a treaty?

It is commonly defined to be a solemn written compact, entered into between two independent nations, to regulate their intercourse.

7. In whom is the power to make treaties vested, in this country?

In the President of the United States, with the concurrence of two-thirds of the Senate. Treaties duly made are declared by the federal constitution, to be "the supreme law of the land." They may, therefore, be called a part of the written law.

8. What is a *statute?*

A law duly enacted by the Legislature. Acts of Congress, and the laws passed by the several State Legislatures, are statutes.

9. How may statutes be divided?

They are either *public* or *private*. A public statute is an universal rule or law, that regards the whole community; private statutes operate upon particular persons or associations. Statutes are something *local*, being limited in their operation to certain counties, townships, boroughs or places in a State.

10. When does a statute begin to take effect?

From its date, or the time of its passage and finally becoming a law; unless it is otherwise specially provided in the statute itself or by law.

11. Where statutes are repugnant to each other, in their provisions, which of them prevails?

The latest statute always prevails; and it is considered as repealing any prior statute so far as the provisions thereof are contrary to it.

12. What is the rule of law, when a statute repealing another statute is itself repealed?

The general rule is, that the other statute is thereby revived. In some of the States a different rule is established by a general statutory provision.

13. May an Act of Congress, or a law of any of the States, be declared unconstitutional and void?

An act of Congress may be declared void, for being contrary to the federal constitution; and a law of a State for being contrary to the federal constitution, or an Act of Congress in pursuance thereof, or the State constitution; by the proper courts of justice, in the due administration of the laws. c

14. What is *unwritten* or *common law*?

"The common law includes those principles, usages and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the legislature." 1 *Kent's Commentaries on American Law*, p. 448, 470.

"Those parts of the law which, in England and here, are called unwritten, are so styled, because their original institution and authority are not set down in writing, as Acts of Parliament or of the State legislature are; but they receive their binding force, and the power of laws, by long and immemorial usage, and universal reception: And the monuments and evidence of this common law are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the profession, handed down to us from the highest antiquity." 1 *Black. Comm. p.* 63. 1 *Pennsylvania Black. p.* 34.

"The common law, as far as it is applicable to our institutions and government, has been recognized and adopted as one entire system by the constitutions of Massachusetts, New York, New Jersey and Maryland. It has been assumed by the Courts of justice, or declared by statute, with the like modifications, as the law of the land, in every State. It was imported by our colonial ancestors, and was sanctioned by royal charter and colonial statutes. It is also the established doctrine that English statutes, passed before the emigration of our ancestors, and applicable to our situation, constitute a part of the common law of the country." 1 *Kent's Comm. p.* 472.

"We have not under our federal government any common law considered as a source of jurisdiction; while, on the other hand, the common law, considered merely as the means or instrument of exercising the jurisdiction conferred by the constitution and laws of the Union, does exist, and forms a safe and beneficial system of national jurisprudence.

Though the judiciary of the United States cannot take cognizance of offences at common law, unless they have jurisdiction over the person or subject matter given them by the constitution or laws made

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c As to the constitutionality of statutes, see Part the First, chap. i. ii. and chap. iii, head "Acts of Congress."

in pursuance of it; yet, when the jurisdiction is once granted, the common law, under the correction of the constitution and statutes of the United States, would seem to be a necessary guide in all cases, civil and criminal, not specially provided for by statute." 1 *Kent's Comm. p.* 448.

In some of the States, as in Ohio, the courts have no common law jurisdiction of crimes; and they cannot treat an act as an offence, until the legislature has declared it to be such, and fixed the punishment therefor.

15. What is *equity* in law?

Equity, in its technical sense, is that system of law by which justice is administered in a mode different from that at common law.

It means *chancery law*, or that system of rules by which courts of chancery are governed, in the administration of justice.

16. Has this system of equity been adopted in our country?

In its principles, it has been adopted in most of the States; in respect to its forms of proceeding, in only some of them.

17. Are there courts of chancery in any of the States?

Yes; as in Virginia and New York, where the entire system of chancery proceedings has been adopted.

18. How is *equity* administered in the States where there are no courts of chancery?

In some of those States the common law courts exercise chancery powers in their fullest extent; as in Ohio. In other States *equity* principles are part of the common law, and are carried out in suits and proceedings at law; as in Pennsylvania. In Pennsylvania, however, it has lately been provided by Act of Assembly, that the Courts may adopt the forms of chancery proceeding, in cases where a complete remedy cannot be otherwise afforded.

19. Do the Courts of the United States exercise chancery powers?

Yes.

Law of nations.

20. What is the law of nations?

That system of rules which reason, morality and custom have established among civilized nations;—that code of public instruction which defines the rights, and prescribes the duties of nations, in their intercourse with each other. 1 *Kent's Comm. on American Law, p.* 1.

The law of nations depends entirely upon the rules of natural law, or upon mutual compacts, leagues, treaties, and agreements between independent communities; and in the construction of which compacts we have no rules to resort to but the law of nature; that being the only law to which these communities are equally subject. 1 *Black. Comm. p.* 43.

21. Is the law of nations a part of the law of this country?

The law of nations was part of the common law of England; which, so far as it may be consistent with the institutions of the country, and remains unaltered by statute, is an essential part of American jurisprudence. Its principles are recognized by the federal courts and embraced in the municipal law of the several States.

The law of nations is inforced, in some instances, by the sanctions of municipal law; and the offences which fall more immediately under its cognizance are, the violations of safe conduct, infringements of the rights of ambassadors, and piracy. To these may be added the slave trade, not indeed, as a piratical trade, absolutely unlawful by the law of nations, but as a trade condemned by the great principles of justice and humanity, openly professed and declared by the powers of Europe. 1 *Kent's Comm. p.* 1.

Power to punish offences against the law of nations has been expressly conferred on Congress by the federal constitution; and Acts of Congress have been passed for that purpose, in reference to the above mentioned offences.

The law of nations always formed a part of the municipal law in Pennsylvania. 1 *Dallas Reports, p.* 114, 120.

It is under this head, in the law, are generally considered, the privileges of ambassadors and consuls of foreign governments, and their exemption from arrest under the laws of the country; also, the power of arresting persons for offences committed in another country, and the right of a government to demand of another government the surrender of criminals escaping into the territory of the latter.

DIVISIONS, AND DEFINITIONS, IN LAW.

22. What are the primary and principal objects of the law?

Rights and *wrongs;* or the establishment of rights, and the prohibition of wrongs.

23. How are rights divided?

Into the *rights of persons*, being those which concern or are annexed to the persons of men; and the *rights of things*, being such as a man may acquire over external objects, or things unconnected with his person.

24. How are wrongs divided?

Into *private wrongs* and *public wrongs*. *Private* wrongs being such as are an infringement of particular rights, concern individuals only, and are called *civil* injuries; and *public* wrongs are those, which, being a breach of general law, affect the whole community, and are, therefore, called crimes and misdemeanors.

Division of persons.

25. How are persons divided, in law?

Into *natural* persons and *artificial* persons. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, and are called corporations and bodies politic.

Corporations.

26. What is a corporation?

A corporation is a franchise, or civil right and privilege, possessed by one or more individuals, who subsist in a body politic, under a special denomination, and are vested, by the policy of the law, with the capacity of perpetual succession, as an individual.

27. How are corporations divided?

Into *aggregate* and *sole*. A corporation *sole* consists of a single person, who is made a body corporate or politic, in order to give him some legal capacities and advantages, and especially that of perpetuity, which as a natural person he could not have. The corporations with us are generally *aggregate*, or the union of two or more persons in one body politic, with a capacity of succession and perpetuity.

28. How are corporations further divided?

Into *ecclesiastical* and *lay*. Ecclesiastical corporations are those of which the members are spiritual, and the object is also spiritual. With us, they are called *religious* corporations.

29. How are lay corporations divided?

Into eleemosynary and civil. An eleemosynary corporation is a private charity, constituted for the perpetual distribution of the alms and bounty of the founder. In this class are ranked hospitals for the relief of poor, sick, and impotent persons, and colleges and academies established for the promotion of learning and piety, and endowed with property by public and private donations. Civil corporations are established for a variety of purposes.

30. How are civil corporations divided?

They are either *public* or *private*. Public corporations are such as are created by law for political purposes, as counties, cities, boroughs; they are vested with subordinate legislative powers, to be exercised for local purposes connected with the public good, and such powers are subject to the control of the legislature of the State. 2 *Kent's Comm. chap.* XXXIII.

Public corporations are those which are founded with public means, and for public purposes. Their criterion is, that no individual has any interest in their foundation, except as a member of the general body politic. To this class belong all municipal corporations, beginning with the United States, and descending down through States, counties, townships, school districts, and the like. These

are for the most part denominated *quasi corporations*, since with the exception of cities and boroughs, they require no special act of incorporation.

Private corporations are those which are founded on private means; their objects may be either public or private; their criterion is a private foundation, whereby individuals have an interest in them distinct from that of the community. *Walker's American Law*, *p.* 207.

A bank created by the government for its own uses, where the stock is exclusively owned by the government, is a public corporation. So, a hospital created and endowed by the government for general purposes, is a public, not a private charity. But a bank, whose stock is owned by private persons, is a private corporation, though its operations partake of a public nature, and though the government may have become a partner in the association by sharing with the corporators in the stock. The same may be said of insurance, canal, bridge, turnpike, and rail road stock. 2 *Kent's Comm. p.* 275.

31. What are some of the leading properties of a corporation?

(1.) That a corporation has *uninterrupted succession*, so long as its charter or the law incorporating it endures, independently of the death or change of its members.

(2.) All the acts which a corporation can do, are done in its *corporate name*, without any specification of its members.

(3.) Corporations are authorized to have and use a *corporate seal.*

(4.) Corporations are authorized to make *bye-laws*, consistently with the provisions of its charter or act of incorporation, and the laws of the land.

(5.) The individual members of a corporation are not personally liable for its debts, beyond the amount of their shares in the capital stock; unless they are expressly made so by the charter or act of incorporation, or by law.

32. How is a corporation generally created?

By an Act of the Legislature of the State.

33. What power has a State Legislature to create corporations?

A State legislature may create corporations, by virtue of the general powers vested in it, unless it is expressly prohibited by the constitution of the State. In some States the power is expressly granted by the constitutions thereof; and in some instances, the power is limited or modified.

34. Does Congress possess power to create corporations.

The federal constitution confers no express power on Congress to create corporations. It can only exist as an *incidental* power. It has been exercised as such in the incorporation of a national bank.

Adults and infants.

35. When is a person of full age, capable of making contracts, and of acting for himself, in law?

Full age in males and females, is twenty-one years; which age is completed on the day preceding the anniversary of a person's birth, who until that time is an *infant;* and so styled in law. 1 *Black. Comm. p.* 463.

The age of twenty-one years is probably the period of absolute majority throughout the United States; though female infants, in some of the States, have enlarged capacity to act at the age of eighteen. In Vermont and Ohio females are deemed of age at the age of eighteen years. And Louisiana follows in this respect the common law period of limitation, though entire majority by the civil law, as to males as well as females, was not until the age of twenty-five. 2 *Kent's Comm. p.* 232.

Males and females.

36. What are the capacities of females in law?

Females have no political capacity; that is, they have no direct voice or agency in the formation or administration of government. While they remain unmarried their legal capacities are the same as those of the other sex. When married they are placed under various disabilities.

Persons public or private.

37. How may the relations of persons be divided?

Into *public* and *private.* Public persons include all those who occupy official stations; all others are private.

Citizens and aliens.

38. How may private persons be divided?

Into *citizens* and *aliens.* Citizens are, generally, all free persons born within the United States, and all persons duly naturalized. *d*

In most of the United States, there is a distinction in respect to political privileges between free white persons and free colored persons of African blood; and in no part of the country, except in Maine and Massachusetts, do the latter, in point of fact, participate equally with the whites, in the exercise of civil and political rights.

The right of voting is confined to white freemen by the constitutions of Delaware, Virginia, Kentucky, Louisiana, Mississippi, Illinois, Indiana, Ohio, Missouri, South Carolina, Georgia, and Pennsylvania.

"Negroe and other slaves, born within and under the allegiance of the United States, are natural born subjects but not citizens. If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United

d As to citizens and aliens, their rights and privileges, see Part the First, chap. i. p. 27, 28., and as to the naturalization of aliens, Part i. chap. iii, p. 57, 58.

States, and born free, he becomes thenceforward a citizen, but under such disabilities as the laws of the States respectively may deem it expedient to prescribe to free persons of color." II. *Kent's Comm. p.* 257, *in note.*

The right of *suffrage*, or of voting at the general and other elections, varies in the different States. *e*

39. What are the principal private or *domestic* relations of persons?

That of *husband* and *wife;* that of *parent* and *child;* that of *guardian* and *ward;* that of *master* and *servant.*

Slaves.

Domestic slavery having commenced, at an early period, in this country, continued and increased throughout these United States while they were colonies of Great Britain. It exists now in all the Southern States of the Union; but it has become extinct in all the Eastern States, and in New York and Pennsylvania, having been abolished therein by their constitutions or laws. In the ordinance of Congress, of July 13th, 1787, for the government of the territory of the United States North West of the river Ohio, it was enacted, and declared to be an unalterable provision, that there should not be slavery, nor involuntary servitude, in the said territory, otherwise than in the punishment of crimes. This provision prevented the introduction of slavery in any of the States North of the river Ohio, and included in what was then called the North Western Territory of the United States.

In the slaveholding States, "in the contemplation of their laws slaves are considered, in some respects, as things or property, rather than as persons, and are vendible as personal estate. They cannot take property, by descent or purchase, and all they find, and all they hold, belongs to the master. They cannot make lawful contracts, and they are deprived of civil rights. They are assets in the hands of executors for the payment of debts; and cannot be emancipated by will or otherwise, to the prejudice of creditors." II. *Kent's Comm. p.* 253.

The laws that regard slaves as property are local, and only apply so far as such laws can operate. Such local laws do not make them personal property generally. 18 *Pickens' Reports, p.* 216.

The state of slavery is a mere municipal regulation, depending upon the laws of the country or State under which it exists, and no nation or State is bound to recognize the state of slavery as to foreign slaves within its territory. It is so as between the States of this Union, except so far as the provisions of the federal constitution extend. This principle was contained in the decision of the Supreme Court of the United States, made in 1838, in the case of Prigg *vs.* The Commonwealth of Pennsylvania, reported in 16 *Peters' Reports, p.* 539.

e See as to the right of suffrage, further on, Part ii. chap. iv. quest. 58, and chap. vii. quest. 7, 8.

Division of property.

40. How may property be divided?

Into *things in possession*, and *things in action*. The latter consists of legal rights, and their corresponding obligations, which may be recovered or enforced by action or suit at law. Rights arising from contracts are of this kind.

41. How may property be otherwise divided?

Into *things real* and *things personal*. Things real are such as are permanent, fixed and immovable, as lands and tenements. Things personal are goods, money, and all other movables; which may attend the owner's person wherever he thinks proper to go. The latter are called *goods and chattels*.

Testator and intestate.

42. What is the meaning of these terms?

Where a person has made a last *will* and *testament*, to take effect after death, the deceased is thence called a *testator*. And a person dying without a will is said to die *intestate*.

Executors and administrators.

43. Who are executors and administrators?

An *executor* is a person appointed by a testator to execute his last will and testament; to dispose of his property, and settle his affairs, after his death. An *administrator* is a person designated by law to settle the affairs of one dying *intestate*.

Division of time.

44. What is a year, in law?

A determinate period consisting of three hundred and sixty-five days; the increasing day in leap year together with the preceding one being accounted for one day only.

A year includes the space of time from a certain day in a particular month until the same day in the same month in the succeeding year; one of the days being included, and the other excluded.

45. What is a month in law?

In this country, the common understanding is, that a month means a *calendar* month. In some of the States it is so provided by statute.

46. What is a day, in law?

In the space of a day all the twenty four hours are generally reckoned; the law usually rejecting all fractions of a day in order to prevent disputes. Therefore if I am bound to pay money on a certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. Fractions of a day are, however, regarded in some matters, as in recording deeds, and the like. Particular rules prevail, in law, as to negotiable or commercial paper.

Territorial divisions.

47. What are the general divisions of a State for civil purposes?

A State is generally divided into counties; each county into townships or towns, hundreds, or parishes; and each township into districts, or precincts. A county may contain a city; and townships boroughs, towns and villages. In some States there are other territorial divisions, in relation to the militia, common schools, and other matters. *f*

CHAPTER III.

OF THE DECLARATION OF RIGHTS, IN A STATE.

1. What is the Declaration of Rights, in a State?

That part of the Constitution of a State in which are declared and contained certain general principles, prohibitions and provisions, in relation to the rights of the people, and the powers of government, is called the Declaration or Bill of Rights.

2. Are these rights called the *declared* and *peremptory* rights of the people?

Yes. They are defined by the constitution of the State.

3. Is there such a Declaration of Rights in all the State constitutions?

Yes.

4. Have similar declarations of the rights of man been made in most of the States, and when they were colonies, from the earliest periods of their history?

Yes.

5. What was the great announcement of the fundamental rights of man, in this country?

The Declaration of Independence of the North American States, July 4, 1776.

6. Is there such a declaration of rights in the constitution of the United States?

There are many provisions therein, declaring these rights, and designed for their protection, particularly in the Amendments thereto.

f See an explanation of such divisions, Part ii. chap. vii; and in Pennsylvania, in Part the Third of this work, chap.

7. Of what force are the principles and provisions contained in the Bill of Rights of a State?

They are binding on all the departments of the government thereof, and on the people, in all cases, above all other laws of the State.

Equality of rights.

8. Do the State constitutions, in general, contain provisions declaring the equality of the rights of all men?

Yes. Such are the provisions in the constitutions of many of the States: "That all men are born equally free and independent, and have certain natural, inherent, and inalienable rights; among which are the enjoying and defending life and liberty, acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety." *a*

9. What is meant by the declaration in these provisions that all men are born equally free and independent?

That all men are entitled to equal civil and political rights.

10. Is the same principle contained in the Declaration of Independence of the United States?

Yes: "We hold these truths to be self evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; and that to secure these rights, government was instituted among men, deriving their just powers from the consent of the governed."

Hereditary titles.

11. What is the provision as to hereditary titles and offices?

It is generally provided in the State constitutions that the Legislature shall not grant any titles of nobility or hereditary distinction.

12. Does the federal constitution prohibit both the United States, and the individual States, from conferring, and the citizens from receiving, any hereditary title, emolument, privilege or honor?

Yes. *b*

Supreme power of the people.

13. What is the declared principle in the State constitutions as to the supreme power of the people?

That all power is inherent in the people; that governments are founded on their authority; and may be abolished, altered and reformed by them as they may think proper.

14. Do the State constitutions, generally, provide a mode in which they may be altered and amended?

Yes.

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a Constitution of Ohio. See that of Pennsylvania, Part the Third, chap. iii.
b See Part the First, chap. iv. p. 77, and chap. v. p. 80.

Religious liberty.

15. What provisions are there as to the rights of conscience?

Generally, that no human authority shall, in any way, control or interfere with the rights of conscience.

16. As to religious worship, or the establishment of religion?

It is generally provided, that no preference shall be given by law to any religious establishment or mode of worship; that all men have a right to worship God according to the dictates of their own consciences; and that no man can be compelled to attend or support any place of worship, or to maintain any ministry.

17. *As to religious tests.*

Is it generally provided in the State constitutions, that no religious tests shall be required as a qualification to office?

In some of the States the constitutional provision is; that no person who acknowledges the being of God, and a future state of rewards and punishments, shall be disqualified on account of his religious sentiments to hold any office under the State.

18. Are there similar provisions in the federal constitution, as to holding offices under the United States?

Yes. *Cons. of U. S. Art.* VI. 3.

19. Is there, then, complete religious toleration in this country, secured by the federal and State constitutions?

Yes. It may be more properly called liberty of religion.

Liberty of speech and of the press.

20. What is, generally, the constitutional provision?

That every citizen has a right to speak, write or print upon any subject, being liable for the abuse of that liberty. And that the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer; and that no law shall be passed to restrain the right thereof.

21. What is generally contained in these Bills of Rights as to prosecutions for *libels* on public officers?

That in prosecutions for any publication respecting the official conduct of public officers, or where the matter is proper for public information, the truth may be given in evidence.

22. What is the common law doctrine in relation to *libels*?

That in indictments for libels, which are written or printed abuse, the truth cannot be given in evidence.

23. What is the provision as to the power of juries in indictments of libels?

That in all indictments for libels the jury shall have the right to determine the law and facts, under the direction of the court, as in other cases.

24. What is the provision in the federal constitution?

"Congress shall make no law abridging the freedom of speech or of the press." *Cons. of U. S. Amendments Art.* I.

Security of property.

25. Do the State constitutions generally provide that private property shall not be taken for public use, without just compensation?

Yes. The federal constitution contains a similar provision. *Cons. of U. S. Amend. Art.* V.

Security of contracts.

26. What is the provision of the federal constitution as to laws impairing contracts?

"No State shall pass any law impairing the obligation of contracts."*c*

27. What is the provision in the several State constitutions on the subject?

That no law impairing the obligation of contracts shall be passed. *c*

Right of petition.

28. Is the right of the people to petition the government for redress of grievances, secured by the federal and State constitutions?

Yes. *Cons. of U. S. Amendments, Art.* I.

Right of the people to assemble.

29. Is the right of the people peaceably to assemble, secured by the federal and State constitutions?

Yes. *Cons. of U. S. Amendments, Art.* I.

Ex post facto laws.

30. Do the constitutions of the several States, generally, provide that the Legislatures thereof shall pass no *ex post facto* laws? *d*

Yes. And they are prohibited from so doing by the constitution of the United States. *d*

Bills of attainder. *e*

31. Are the legislatures of the several States generally prohibited by the constitutions thereof, from passing bills of attainder?

Yes; and also by the federal constitution.

32. What do the State constitutions provide as to attainder for any crime?

No conviction shall work corruption of blood or forfeiture of estate, except during the life of the offender. *e*

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c As to the construction of these constitutional provisions, see Part the First, chap. v. p. 79.

d See Part the First, chap. iv. p. 76, as to these terms.

e As to the meaning of the terms, and construction of this provision, see Part the First, chap. iv. p. 75.

Habeas Corpus. f

33. What is the provision generally contained in the State constitutions, in relation to the writ of *Habeas Corpus*?

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

There is a similar provision in the federal constitution. *Cons. of U. S. Art.* I. *sect.* IX. 2.

Warrants, searches and seizures.

34. What is the provision on this subject, in the State constitutions?

That the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. There is the same provision in the constitution of the United States.

"No person shall be deprived of life, liberty, or property, without due process of law." *Cons. of U. S. Amendments, Art.* V.

Bail.

35. What do the State constitutions provide as to accused persons being bailed?

That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great.

36. What is the provision as to *excessive bail*?

The State constitutions, generally, provide that excessive bail shall not be required. And the federal constitution contains a similar provision. *Cons. of U. S. Amend. Art.* VIII.

Indictments.

37. What do the State constitutions provide as to trial by indictment?

They generally provide that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, or in time of war, or public danger. There is a similar provision in the federal constitution. *Cons. of U. S. Amend. Art.* V. In some of the States there is such a provision in relation to all criminal charges. In other States the constitutional provision is, that no person shall, for any indictable offence, be proceeded against criminally by *information*, except in cases arising in the land or naval forces, or in the militia, in the time of war or public danger; or by leave of the court, for oppression and misdemeanor in office. An information is a mode of proceeding at common law; and is an accusation filed by the prosecuting officer, upon which the accused may be brought to trial

f See Part the First, chap. iv. p. 75.

without the intervention of a grand jury. In some of the States, it is entirely abrogated, as mentioned above, and in the others it is scarcely ever used.

Right of the accused in criminal cases.

38. What is generally contained in the State Bills of Rights, as to the right of the accused in criminal cases, and their trial?

That, in all criminal cases, the accused hath a right to be heard by himself or counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to obtain witnesses in his favor; to have a speedy public trial, by an impartial jury of the county or district in which the offence shall have been committed. In some of the States to such a constitutional provision it is further added, that the accused "cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land." It is also generally provided, "that no person shall, for the same offence, be twice put in jeopardy of life or limb." There are provisions, nearly the same, in the Constitution of the United States. *Cons. of U. S. Amendments, Art.* VI.

Trial by jury.

39. What do the State constitutions provide as to the right of trial by jury?

"That in all criminal prosecutions, the accused hath a right to a speedy public trial by an impartial jury of the vicinage."

In some of the States, "that the trial by jury shall be as heretofore, and the right thereof remain inviolate."

40. What are the provisions in the federal constitution on the subject?

"In all criminal prosecutions the accused shall enjoy the right to a speedy public trial, by an impartial jury of the State or district, where the crime shall have been committed." *Cons. of U. S. Amendments, Art.* VI.

"In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved." *Cons. of U. S. Amendments, Art.* VII.

Fines and punishments.

41. What do the State constitutions contain on this subject?

Generally, "that excessive fines shall not be imposed; nor cruel and unusual punishments inflicted." And the same provision is also in the federal constitution. *Cons. of U. S. Amend. Art.* VIII.

Attainder. g

42. What do the State constitutions generally provide?

"No conviction shall work corruption of blood; nor forfeiture of estate;" except (in some States) for the life of the offender.

g See Part the First, chap. iv. p. 75.

Suspension of laws.

43. What do the State constitutions declare as to the power of suspending laws?

That no power of suspending laws shall be exercised; unless by the legislatures.

Right to bear arms.

44. What is the provision?

"That the people have a right to bear arms for the defence of themselves and the State."

"A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." *Cons. of U. S. Amend. Art.* II.

Administration of justice.

45. What do the State Bills of Rights provide as to the remedy by law for wrongs or injuries?

Generally, "that all courts shall be open; and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and right and justice done him without denial or delay."

Imprisonment for debt.

46. What is contained in some of the State Bills of Right on this subject?

In some of the States, it is provided therein, "that the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the use of his creditors in such manner as shall be prescribed by law."

Right of emigration.

47. What is the provision?

Generally, that emigration from the particular State shall not be prohibited.

CHAPTER IV.

OF THE LEGISLATURES OF THE STATES.

1. In whom is the legislative power of each State, generally, vested?

In a Legislature, or "General Assembly," consisting of two branches, a Senate and House of Representatives or Delegates; elected by the people of the State.

In Massachusetts and New Hampshire the legislature, consisting of two branches, is called the "General Court" of the particular State. In South Carolina the most numerous branch of the legislature is styled "the House of Commons."

2. Do the two branches of a State legislature, act seperately and independently, in their deliberations, and proceedings, for the making of laws?

Yes.

3. Is the assent of both branches of the Legislature of a State necessary to the enactment of a law?

Yes.

4. Is it generally provided by the constitution and laws of a State, that no member of Congress, or officer under the United States shall be a member of the State legislature?

Yes.

5. Is it generally so provided that a person holding an office (except of attorney at law, or in the militia) under the State, shall not be a member of the legislature thereof?

Yes.

6. Is it provided in some of the States that no member of the Legislature of the State shall, during the time for which he was elected, be appointed to any civil office under the State, which shall have been created, or the emoluments of which shall have been increased, during such time?

Yes.

Number of members thereof.

7. What is generally, the number of members in the Legislatures of the States respectively?

The number is generally limited by the constitutions of the States respectively; in many of the States it is not less than sixty nor more

than one hundred in the House of Representatives or most numerous branch, and in the Senate not less than one fourth nor more than one third of the number of Representatives. In some of the States the number is greater, and in others less.

Apportionment of members.

8. How are the members of the Legislatures of the several States apportioned among the counties and districts thereof?

According to the number of taxables in each county or district, or, in some States, of the white male adults; for which purpose an enumeration thereof is made at certain periods.

Qualifications.

9. What are the qualifications, generally required, to be a member of a State Legislature?

That a person be a citizen of the State, a resident therein, that he be an adult of a certain age, and have resided for a certain time in the district or county for which he may be elected. A greater age and longer residence are generally required as qualifications of a Senator than of a Representative.

Election of members thereof.

10. What are the qualifications of electors of members of the State Legislatures?

In general, at all elections by the people, every white freeman, being a citizen of the United States, of the age of twenty-one years, who has resided in the State for one year preceding unless absent on public business, who is an actual resident of the township or district where the election is held, and who has paid a State or county tax, is entitled to vote. In some of the States, it is required that a person shall be a freeholder, or own a certain amount of property, in order to his enjoying the rights of an elector. In other States, the right of suffrage is *universal;* neither the payment of taxes, nor the owning of property, being requisite to the exercise of it.

The qualifications necessary in electors of the most numerous branch of the State legislature are requisite in electors of United States officers. See Part the Second, chap. VII. head "Elections."

Term of service.

11. What is the term of service of the members of the State Legislatures?

Generally, the Representatives, or members of the most numerous branch, are elected for one year; and the terms of service of the Senators vary in the different States, being in some for three years, and so arranged that one third of the number is elected every year, and in other States for a shorter or longer period.

Time of meeting.

12. When are the State legislatures required to meet?

At least once a year, as directed by the State constitutions respectively.

13. What power have the governors of the several States to convene the legislatures thereof?

Generally, in each State the governor is authorized, by the constitution thereof, to convene the legislature on extraordinary occasions.

14. May the members of the Legislatures be compelled to attend their meetings?

It is generally provided in a State constitution that each branch of the Legislature may compel its members to attend its sessions.

Adjournment.

15. How may the State legislatures adjourn?

By the joint order or resolution of both Houses thereof, at any time.

16. To what time may they adjourn?

To any time, before the next election for members thereof.

17. What is the power of either House of a State legislature as to adjourning?

Generally, neither House can adjourn for more than three days; nor to any other place, than that in which the two Houses are sitting.

18. What power have the Governors of the several States to adjourn the legislatures thereof?

In some of the States, the Governor of the State is authorized, by the constitution thereof, in case of disagreement between the two Houses of the legislature as to the time of their adjournment, to adjourn the same to such time as he shall see proper, not exceeding a limited period.

Privilege of members from arrest.

19. What is the privilege of members of the State legislatures from arrest?

By the State constitutions, it is generally provided, that they shall be privileged from arrest during their attendance at the sessions of their respective Houses, in all cases except treason, felony, and breach or surety of the peace.

20. What privilege have members of the State legislatures, at common law, in civil suits?

It has been adjudged in some of the States, that members of the Legislatures are privileged from arrest, summons, citation or other civil process, during their attendance on the public business confided to them. 4 *Dallas' Reports p.* 107.

Freedom of speech or debate.

21. What is the privilege of members of the State legislatures as to speech or debate therein?

There is generally a constitutional provision of the State that they shall not be questioned for any speech or debate in the Legislature.

Compensation of members.

22. Do the members of the State legislatures receive a compensation for their services?

They generally receive a certain sum for every day, during their attendance on the sessions of the legislatures; in some states three dollars a day, in others less or more.

SEPARATE POWERS AND DUTIES OF EACH HOUSE.

23. What are the powers, in general, of each House of a State legislature?

It is generally provided in the State constitution, that each House shall have all the powers necessary for a branch of the Legislature of a free State.

As to the election and qualification of members.

24. How are the qualifications of members of the State legislatures to be determined?

Each House of a State legislature is to judge of the qualifications of its own members.

25. How are contested elections of members to be determined?

By the legislature of the State, in such manner as is directed by law.

Quorum.

26. What number constitutes a quorum?

A majority of each House of a State legislature constitutes a quorum to do business. And there is generally provision by law for compelling the attendance of absent members. A smaller number than the majority in each House may adjourn from day to day.

Officers.

27. What are the usual officers of each House of a State legislature?

A speaker, as presiding officer, a secretary or clerk, a sergeant-at-arms, and doorkeeper, with their deputies or assistants.

28. How are the officers appointed?

Each House chooses its own officers.

Rules of proceeding.

29. How are rules of proceeding adopted?

Each House determines the rules of its proceedings.

Power to punish its members.

30. What power has each House to punish its members?

Each House may punish its members for disorderly behaviour. It is generally so provided by the State constitution.

Expulsion of members.

31. What power has each branch of a State legislature to expel any of its members?

It is generally provided in the constitution of a State that each House of its Legislature may, with the concurrence of two thirds, expel a member. In some States a member cannot be thus expeled a second time for the same cause. Members of a Legislature cannot be removed by impeachment. *a* They may be punished by indictment before the courts of justice for bribery, corruption or other misdemeanor.

To sit with open doors.

32. Is the Legislature required to sit with open doors?

It is generally provided in the constitution of a State, that each House of the Legislature shall sit with open doors, unless the business shall be such as ought to be kept secret.

Journal.

33. Do the State legislatures keep journals of their proceedings.

It is generally required by the constitution of a State, that each House of its Legislature shall keep a journal of its proceedings, and publish it from time to time, except such parts as may require secresy.

Yeas and nays.

34. What is the law as to taking the yeas and nays of members of the State Legislature?

It is generally provided in the constitution of every State that the yeas and nays of the members of each House of its Legislature shall be taken, on any question, at the request of a certain number of the members, and entered on its journal. In some States it is done at the request of two members; in others, of a greater number. At the calling of the yeas and nays, every member may be compelled to vote, unless excused.

Contempt.

35. Have the State legislatures power to punish for contempt?

Each House of a State legislature has the power, generally given expressly by the constitution of the State, to punish its own members for misbehaviour or contempt; and it has the implied power, arising from the nature of its duties, and necessary for their performance, to commit and imprison other persons for contempt. *b*

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a See Part the First, chap. iii. head "Impeachments."

b As to the power of Congress to punish for contempt, see Part the First, chap. iii. ques. 79.

Vacancies.

How are vacancies in the State Legislatures supplied?

The Governor, by his proclamation, or the Speaker of the proper House, by his warrant, orders a special election in the vacant district.

The term of service of Senators and Representatives in the State Legislatures is an *integral* term, so that when a vacancy occurs by death, resignation or otherwise, the person elected to fill it only serves out the unexpired time.

GENERAL DUTIES AND POWERS OF THE STATE LEGISLATURES.

36. How are the duties and powers of the State Legislatures declared?

By the constitutions of the States respectively.

37. Are the powers of the State legislatures limited?

Yes; by the constitution of the United States, and the constitutions of the States respectively.

38. How are the powers of the State legislatures limited by the constitution of the United States?

By the express prohibitions in it of powers to the several States, or the legislatures thereof; and by the grant of powers exclusively to Congress, or the general government. *c*

39. How may the powers of the State legislatures be classed?

As powers granted, *expressly* or *impliedly*, and powers *prohibited* or *limited.*

40. How are powers granted to the State legislatures in their constitutions respectively?

Mostly in general terms, and by conferring powers expressly or imposing duties necessarily implying them. *d*

The following remarks, though particularly applicable to the constitution of the United States, contain correct views as to the construction of constitutions of government generally.

"There is not in the whole of the federal constitution a grant of powers, which does not draw after it others, not expressed, but vital to their exercise; not substantive and independent, indeed, but auxiliary and subordinate. There is no phrase in it, which, as the Articles of Confederation did, excludes incidental and implied powers, and which requires that every thing granted shall be expressly and minutely described. Even the tenth Amendment, which was framed

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c See Part the First, chap. v.

d See explanations in Part the First, chap. iii. and v; and Part the Second, chap. i.

for the purpose of quieting the excessive jealousies, which had been excited, omits the word "expressly," (which had been contained in the Articles of Confederation) and declares only that "the powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" thus leaving the question, whether a particular power, which may become the subject of contest, has been delegated to the general government, or prohibited to the States, to depend upon a fair construction of the whole instrument.

"The nature of a constitution requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients, which compose those objects, be deduced from the nature of those objects themselves. That this idea was entertained by the framers of the American constitution, is to be inferred not only from the nature of the instrument, but from its language. Why, else, were some of the limitations, found in the ninth section of the first article, introduced? It is also, in some degree, warranted, by their having omitted to use any restrictive term, which might prevent its receiving a fair and just interpretation." 1 *Story on the Cons. p.* 418.

41. How are the powers of the legislatures of the States limited by their constitutions?

By specific prohibitions, or limitations; or provisions involving the same. See Part the Second, chap. III.

42. What is the rule of construction, then, as to the powers of the State legislatures, under their constitutions respectively?

That the grant of power is general, and the prohibition or limitation of it special. *e*

43. What powers, in general, are conferred on the Legislature of a State by its constitution?

Those conferred by having vested in it the legislative power of the State, and the specific powers expressly granted.

44. What power does a State legislature possess by having vested in it the legislative power of the State?

All the general and necessary powers of the legislature of a free government; not prohibited to it by the constitution of the United States, or of the State, nor contrary to any provisions thereof.

45. What are the powers prohibited to the legislature of a State, by its constitution?

Those specific powers expressly forbidden to it, and those which are contrary to any provisions of the constitution.

46. Are there powers which may be exercised concurrently by Congress and the State legislatures?

Yes. They are called concurrent powers. *f*

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e As to the construction of constitutions, and constitutional law, See Part i. chap. ii.

f See Part the First, chap. i. p. 24, chap. ii. p. 33, and chap. iii. p. 50, 51.

Appointment to office.

47. What powers have the State legislatures to elect or appoint officers?

In many of the States it is provided by their constitutions, that certain officers shall be appointed by the legislature of the State, or the Senate; or that they shall be nominated by the Governor of the State, and be appointed by and with the approbation of the Legislature or of the Senate. And in some States the power of appointing officers, except in particular cases, may be prescribed by law, and of course may be vested in the Legislature of the State. *g*

Impeachment.

48. How may State officers be impeached?

It is generally provided in the State constitutions that all civil officers of the State may be impeached for misdemeanor in office. Impeachments are, mostly, preferred by the House of Representatives of the State, and tried by the Senate. *h*

Of the mode of enacting laws.

49. How may laws originate or be proposed in the State Legislatures?

All laws may originate in either House of the Legislature of a State; except that, in some States, bills for raising revenue must originate in the House of Representatives of the State.

50. What is a *bill* in a Legislature?

A project of a law, offered by a member or committee of either House, according to the rules thereof.

51. What is the mode of proceeding in enacting a law by a State legislature?

Generally, all laws must be first passed by one House and then by the other, according to the rules of each House. *i*

52. What number of members of each House must agree to a bill or resolution before its passage?

A majority of the members present, a quorum attending; except in cases where the assent of a greater number is expressly required by the constitution of the State.

53. How is a law of a State finally enacted?

In almost all the States it is provided by their constitutions, that every bill which shall have passed both Houses of the Legislature of the State, shall be presented to the Governor of the State to be signed by him, if he approve of it, in which case it then becomes a law, or if not approved by him, to be returned by him to the Legislature, for re-consideration by it, in the manner prescribed, when if it shall be

g For appointments to office, see Part ii. chap. v. and chap. vii.
h As to the subject of impeachment, see Part the First, chap. iii. p. 40.
i See Part the First, p. 71, 72.

passed again by two thirds of both Houses thereof it shall become a law.

The power of a Governor of a State to disapprove a bill passed by the Legislature thereof is called his "veto" power. *j*

54. May laws be passed, in some of the States, by the Legislature of the State without being presented to the Governor for his assent, or any action thereon by him?

Yes. It is so in the State of Ohio.

Laws passed by the State Legislatures.

55. What are the laws of a State passed by the Legislature thereof called?

The Acts of the General Assembly, or Legislature, of the State.

56. What is a statute of a State?

A written law, passed by the Legislature, and duly enacted. *k*

57. What is the date of a statute or law of a State?

The day of its being approved by the Governor of the State, or otherwise finally becoming a law.

58. May a law which has been passed by a State legislature, and gone through all the forms of a law, be declared unconstitutional and void?

Yes. Any such law, which is contrary to a provision of the federal or State constitution, is void; and it may be so decided by the courts of justice of the State, or of the United States, in the administration of the law.

59. Where are the original laws of a State, as passed by the Legislature thereof, and finally enacted, filed and recorded?

In the office of the Secretary of the State. They are called the original *rolls* of the laws.

Publication, and evidence of State laws.

60. How are the statute laws of the several States published?

They are published, by law, in annual pamphlets, containing the laws of the State passed in the particular year; in certain newspapers; and, in some of the States, in compilations of the statute laws of the State, prepared as prescribed by law.

61. How are the laws of a State proved in courts of justice or otherwise?

By exemplifications or copies of the original laws, by the Secretary of the State, under the great seal of the State. The printed pamphlets of the laws, and compilations of them, published by authority of the State, are also made evidence of them.

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j See Part the First, p. 95.
k See Part the Second, chap. ii.

62. What is the proof of such laws in other States?

By the federal constitution, "full faith and credit shall be given to the public acts and records of every other State; and Congress may, by general laws, prescribe the manner in which such acts and records shall be proved, and the effect thereof." *Art.* IV. *sect.* I. By the Acts of Congress, of 1790 and 1804, legislative acts of the States are to be authenticated by the certificate of the Secretary of State, and the great seal of the State.

CHAPTER V.

OF THE GOVERNORS OF THE SEVERAL STATES.

1. What is the *executive* department of a government? *a*

That department which has the power of carrying the laws into effect.

2. In whom is the supreme executive power of each State vested?

Generally, in a governor. The Governor of a State is called the *executive* or chief magistrate thereof.

3. Why is the executive power of government vested primarily in a single person?

In order to secure promptness, certainty and energy in the execution of the laws.

4. How is the organization of the executive department in each State, with its separate primary powers and duties, determined?

By the constitution of the State.

5. Is there in some of the States an *executive council*, whose assent is necessary to the appointment of officers and other measures by the governors respectively?

Yes. In some States such council is elected by the people; in others, by the Legislature of the State.

Term of service.

6. What is the term of service of the governors of the several States?

It varies in the differant States, being from one to four years. In some States it is provided that a person shall not be elected governor for more than a certain number of terms in succession.

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a See Part the First, chap. i. p. 25, and chap. viii.; and Part the Second, chap. i. p. 115.

Election.

7. How are the governors of the several States appointed?

They are generally elected by the people; but in a few States by the legislatures thereof respectively.

Qualifications.

8. What qualifications in a person are generally required, to be elected governor of a State?

That a person should be of a certain age, generally thirty years, and should have been a citizen of the United States and a resident of the State for a certain time. And generally no member of Congress, or person holding any office under the general or State government, can be governor of a State.

Compensation.

9. What compensation do the governors of the States receive?

The constitutions of the several States provide that they shall receive a compensation, to be fixed by law, which shall not be increased nor diminished during their terms of office. It is different in the several States; being from one to four thousand dollars a year, and in some instances more. In Ohio, it is one thousand dollars a year, and in Pennsylvania three thousand dollars a year.

Duties and powers.

10. What are the duties and powers in general of the Governors of the several States?

It is generally provided in the constitution of a State, that the governor thereof "shall see that the laws be faithfully executed;" and that he shall have certain specific powers; and he may be vested with powers by "law," or the Acts of Assembly, not inconsistent with the constitution.

The governors of the several States possess no other powers than those conferred on them, by the constitutions and laws respectively.

Power and duty as to legislation.

11. Has the Governor of a State power to convene the Legislature thereof?

It is generally provided in a State constitution that the Governor may convene the Legislature on extraordinary occasions.

12. What is his power as to adjourning the Legislature of the State?

He has a similar power to adjourn the Legislature in case of its disagreement as to the time of adjournment.

13. What is the duty of the Governors of the several States as to communicating information to the Legislatures thereof?

It is generally provided in the constitution of a State that the Governor shall, from time to time, communicate to the Legislature information respecting the operations and affairs of the government, and recommend such measures as he shall deem expedient. Such communications are made in writing and called his *messages* to the Legislature.

14. What power has the Governor of a State as to the enactment of laws by the Legislature?

In general, it is provided by the constitution of a State, that any bill passed by the Legislature shall be presented to the Governor, for his approval or disapproval of it; giving him the power of a qualified negative upon it. It is not so, however, in all the States. *b*

The executive of a State has not the right of a negative upon elections by the Legislature, as in cases where the State constitution gives him a qualified negative upon the laws.

Appointment of officers.

15. What powers have the governors of the several States as to the appointment of officers?

In most of the States the power of appointment, as to those officers who are not elected by the people, is conferred by the constitutions on the Governor, with the advice and consent of the State Senate; in some States this is the case with respect to some of the most important offices, and as to the others the Governor has the sole power of appointment. In some States the Legislature appoints all officers not elected by the people, and the Governor is only authorized to fill vacancies in such offices during the recess of the Legislature. Generally, all officers are commissioned by the Governor.

16. Where a governor of a State has the power of appointing officers, who hold office at will, can he remove such officers at his pleasure?

Yes; the power of appointment, in such cases, implies the power to remove. *c*

17. Does the power of appointing, imply the power to remove an officer, in all cases except where the office is held during good behaviour, or its duration for a certain time is specially declared by the law establishing it?

Yes. *c*

Military power.

18. What is the military power of a Governor of a State?

Generally, he is the commander-in-chief of the army and navy of the State, and of the militia, except when called into the service of the United States. *d* By the federal constitution no State shall keep troops or ships of war in time of peace. *d*

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b See Part the Third, chap. iv.

c See Part the First, chap. viii. p. 94.

d As to the militia, see Part the First, chap. iii. head Militia.

Power of pardon.

19. What is the power of the Governors of the States as to reprieves and pardons?

By the State constitutions, they are, generally, vested with power to grant reprieves and pardons for offences, except in cases of impeachment.

20. Under such a power may a governor grant a pardon for an offence before the trial or conviction of the offender?

Yes. In Ohio, the constitution of the State expressly confines its exercise to cases after conviction.

Impeachment.

21. Are the Governors of the several States liable to impeachment?

By the State constitutions, they are liable to impeachment for treason, bribery, or other misdemeanor in office; which impeachment is, generally, on the presentation of the House of Representatives of the State, and tried by the Senate thereof. *e*

Vacancy.

22. How is a vacancy in the office of a Governor of a State to be filled?

As provided by the constitution of the State; generally, by the office devolving upon the Speaker of the Senate, or of the House of Representatives, of the State. In some of the States there is a Lieutenant Governor who officiates as Governor in case of such a vacancy.

Lieutenant Governor.

23. What is the office of Lieutenant Governor?

In some of the States, there is a Lieutenant Governor, elected in the same manner, and for the same term, as the Governor. In case of a vacancy in the office of governor by death, resignation, inability or otherwise, it devolves upon him. There are other duties, in some instances, assigned to this officer.

Chief subordinate State officers.

24. What chief State officers are there, generally, connected with the government of a State?

A Secretary of State, State Treasurer, State Auditor or Comptroller, and Attorney General of the State. These are sometimes called Heads of Departments, for the State. In several States some of them are appointed by the Governors; but generally they are elected by the Legislatures. *f*

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e As to impeachment see Part the First, chap. iii. p. 40.

f See further on, chap. vii., head States and State Officers.

CHAPTER VI.

OF THE COURTS AND JUDICIARY OF THE STATES.

1. What does the constitution of each State, generally provide as to the judicial power of the State?

That the judicial power of the State shall be vested in certain courts, described in the constitution, and in such other courts as shall be established by law.

2. Is it a principle in the federal and State constitutions, that the judicial department shall be kept distinct from, and independent of the other departments of government?

Yes.

3. Are the courts of justice of a State the judicial department of its government. *a*

Yes. The judiciary of a State is a co-ordinate branch of the government, with the other departments thereof, deriving in like manner its authority, under the constitution, from the people, and as such being equally the representatives of the people.

4. How may courts be divided with respect to their jurisdiction?

Into courts of *original* and courts of *appellate* jurisdiction. *b*

5. How are courts further distinguished, in relation to their jurisdiction?

As courts of *civil* jurisdiction and courts of *criminal* jurisdiction.

6. What are courts *of record* and courts *not of record*?

Courts which keep proper records of their proceedings, and have a *seal*, are courts of record; others are not of record.

7. Is there a distinction between Courts, in relation to their *chancery* powers?

In some of the States, there are Courts differing from the other courts in exercising *chancery or equity* jurisdiction *c* exclusively. In most of the States the jurisdiction of the courts is mixed, consisting both of common law and equity jurisdiction.

8. What officers are judges of the Courts?

Judicial officers of the State, appointed for a term of years, or for life, during good behavour.

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a See Part the First, chap. ix. on the Judiciary.

b See explanation of the terms, Part the First, chap. ix.

c See explanation of terms, in Part the Second, chap. ii. p. 119.

9. What courts are there in the several States?

Generally, the ordinary courts for each State are; for the whole State, an appellate court, called the Supreme Court, or Court of Errors and Appeals; and for every county, a court of original civil jurisdiction called a Court of Common Pleas, and also courts of Quarter Sessions of the Peace and of Oyer and Terminer and Gaol Delivery, *d* of original criminal jurisdiction, an Orphans' Court, and Register's Court; which courts are held in some States by the same judges, and in others by different judges; and in a few of the States there is in every county a court of *chancery* or *equity*, held by a judge called a *chancellor*. There exists in some States a court in every county held by a single judge of the Supreme Court, called a Circuit Court, and having original jurisdiction, as to the higher crimes and offences, and in civil cases of importance where the sum or value in dispute exceeds a certain amount; an appeal being allowed from this court to the Supreme Court in *bank;* and where there is not such a court, there is, in some instances, a District Court in every county, held by a judge appointed for the purpose, with similar jurisdiction. Mayor's or Recorder's Courts are held only in cities. These are courts of record. There are likewise one or more justices of the peace, *e* in every township, borough or district of each county, and aldermen in the cities.

10. How are the appellate State Courts generally organized?

They generally are composed of three or more judges; who hold a session of the Court once a year for the State; in some of the States they hold sessions of the Court in several districts of the State, assigned for the purpose.

11. How are the Courts of Common Pleas, or ordinary county courts, organized?

Generally, a State is divided for this purpose into judicial districts or circuits, consisting of several counties; for each of which districts or circuits a President Judge is appointed, who holds the court in every county therein, together with two or more Associate Judges appointed therefor. Such courts are held at several stated periods during the year, and as occasion may require.

12. Have the State Courts jurisdiction under the laws of the United States?

In some cases, there is jurisdiction conferred by Acts of Congress on the State Courts and magistrates. It has, however, been adjudged that they are not obliged to exercise such jurisdiction; though they may exercise it, if authorized by the laws of the State.

13. May the State Courts decide that an Act of Congress or law of a State is unconstitutional and void?

Yes.

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d See Part the Third, chap. vi.

e See, further on, in the chapter, head *Justices of the Peace*, and *Aldermen*.

14. May there be an appeal, in any case, to the Supreme Court of the United States from a State Court?

Under the federal constitution, and the judiciary Acts of Congress, there may be an appeal from the final decision of the highest court of law or equity in a State to the Supreme Court of the United States, in certain cases, where such decision has been against the validity of an Act of Congress, treaty, or any commission or authority derived from the federal government, or in favor of the validity of any State constitution, law or authority, where its validity has been drawn in question on the ground of repugnancy to the federal constitution. *f*

15. Are there some cases in which the State Courts have jurisdiction concurrently with the United States Courts?

Yes. *g*

Judges. Appointment.

16. How are the judges of the State Courts appointed?

It is generally provided in the constitution of a State that the judges of the several courts shall be nominated, and by and with the consent of the Senate, be appointed by the Governor of the State. In some States they are elected by the Legislatures; and in others, some of the judges are elected by the people.

17. Are judges required to be "learned in the law?"

It is generally required, in the State constitution or laws, that the persons appointed or elected judges shall "be learned in the law," except associate judges in the county courts.

Duration of office.

18. What is the term of office of the State Judges?

It is generally fixed by the State constitutions; and in some States it is for life, or good behaviour; and in other States, for a term of years, which is various in differant States.

Salaries.

19. What compensation do the judges of the several States receive?

The several State constitutions generally provide that the judges shall receive, at stated periods, a compensation to be fixed by law, and which shall not be diminished during their continuance in office; and that they shall not receive any fees or perquisites of office.

Impeachment.

20. Are the judges of the several States liable to impeachment?

It is generally provided by the constitutions of the several States that they may be impeached for misbehaviour in office. *k*

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f See, as to the Supreme Court of the U. S. Part the First, chap. ix.

g See Part the First, chap. ix.

k As to impeachment, see Part ii. chap. iv. p. 140.

Removal from office.

21. How may the judges, in some of the States, be removed from office on the address of the Legislatures?

In some of the States, it is provided by the constitutions thereof, that the judges, for any reasonable cause which shall not be sufficient ground of impeachment, may be removed from office on the address of two thirds of both branches of the Legislature.

22. Are the judges liable to be removed from office on conviction of misbehaviour in office, or of any infamous crime?

Yes; it is generally so provided in the constitutions of the several States. *l*

Incompatibility of office.

23. Can the judges of the State Courts hold any other office?

It is generally provided in the State constitutions, that the judges shall not hold any other office of profit under the State.

And it is, also, so provided, that no member of Congress or officer of the United States shall at the same time hold any office in the State. *m*

Mayor's or Recorder's Courts.

24. What courts are these?

They are courts in the cities, held by the Mayor or Recorder of a city, together with the aldermen of the city; having jurisdiction to try and punish for the lesser criminal offences, and for violations of the ordinances of the city.

Justices of the Peace.

25. What are Justices of the Peace?

They are officers, one or more in every township, whose general jurisdiction is that of *conservators* of the peace, having authority to receive information and complaints of criminal offences, and to cause the offenders to be arrested and committed for trial before the proper court, and in bailable cases to admit prisoners and others to bail. In some States they have power to try and punish for offences, of the lesser kind, as assault and battery, and the like. In some States, also, they have conferred on them, by Act of Assembly, jurisdiction to try and determine civil suits, where the sum or value in controversy does not exceed a limited amount. *n*

26. How are Justices of the Peace appointed?

In some States, they are appointed by the Governors, with the consent of the Legislature; in other States, by the Legislature; and in others, they are elected by the people.

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l See page, 154.

m See Head officers in general, chap. vii. p. 152.

n See head Justices of the Peace, chap. vii.

27, What is their term of office, generally?

They are generally appointed or elected for a term of years.

28. What compensation do they receive?

They are paid stated fees or perquisites of office, as costs of prosecution or suits, or by the persons for whom the services are performed.

Aldermen.

29. What officers are Aldermen?

They are judicial magistrates in cities; having jurisdiction and powers similar to Justices of the Peace; and especially of prosecutions and suits for violations of the ordinances and bye-laws of the cities, and of proceedings under them. They are generally appointed by the governor of the State, or elected by the people.

Officers of the Courts.

30. What officers of the courts are there?

Prothonotaries or clerks, attornies at law, sheriffs, and constables or bailiffs, or tipstaves.

Prothonatory or Clerk.

31. What officer is a prothonotary or clerk of a court?

There is generally a prothonotary or clerk for each court. In some of the States the same person is prothonotary or clerk of all the courts in a county.

32. What are his duties?

His regular duties are, to keep a record of the judicial proceedings; to keep the seal of the court; to issue all writs and process of the court, file and preserve all papers and documents relative to the business thereof, and to give certified copies of the same, under the seal of the court, when duly required?

33. How is he generally appointed?

In differant modes in the several States; by the appointment of the Governor, the election of the people, or the appointment of the particular court.

34. What compensation does he receive?

Generally, it is derived altogether from prescribed fees, and perquisites of office.

Attornies at Law.

35. Who are attornies at law?

They are persons learned in the law, admitted by the courts, under the rules thereof, to institute suits, manage causes and conduct proceedings, for others having business therein. They are officers of the courts. They are liable to be struck off the roll of attornies, or otherwise punished, by the courts for misbehaviour in office. *o*

o See head Attornies at law, Part the First, chap. ix.

36. What officers are the Attorney General of a State, and prosecuting attornies?

The Attorney General is the legal adviser and attorney at law of the government, and has the superintendance of all the criminal prosecutions in the State. The prosecuting attornies are either the deputies of the Attorney General, appointed by him at his pleasure for the several courts, or elected by the people, who manage and conduct on the part of the State all criminal cases and proceedings in the courts of justice.

Sheriffs.

37. What officer is a sheriff?

He is the executive officer of the courts; generally, elected by the people, for a term of years, in every county. It is his duty to serve and execute all process, writs, orders, judgments, decrees and sentences of the courts in his county. He may appoint deputies, and remove them, at pleasure. He is by virtue of his office conservator of the peace, and authorized to prevent disturbances of the peace, to suppress riots, affrays and unlawful assemblies, and to arrest criminals, and for this purpose he may require the assistance of the citizens, and, if necessary, summon the *posse comitatus*, or power of the county, to aid him. There are often various duties specially required of him, as a county officer, by Act of Assembly. His compensation is from fees and perquisites of office, fixed by law. The courts are, also, authorized to appoint constables or tipstaves to attend them at their sessions as ministerial officers.

Constables.

38. What officers are constables?

They are civil executive or ministerial officers, in every township or parish of a county, or ward of a city. They are elected by the people of the township or parish, or ward of a city for the term of one year. Their regular duty is to serve and execute all warrants, process, writs, orders and judgments of justices of the peace, and aldermen. They are by virtue of their office conservators of the peace, and are authorized to prevent disturbances of the peace, suppress riots, and arrest criminals, on their own view, or on the warrants of the civil magistrates. There, are, also, various duties imposed on them, by special statute, relative to their townships or wards. They are compensated by prescribed fees and perquisites, and allowances for particular services. The courts are generally authorized to appoint a certain number of constables to attend their sessions, to preserve order therein, and perform other ministerial services.

CHAPTER VII.

OF THE STATES AND STATE OFFICERS; AND COUNTIES AND TOWNSHIPS, AND THE OFFICERS THEREOF.

Of officers in general.

1. How may the officers of a State be classed?

Generally, into State officers, county officers, and township, parish or ward officers.

2. How may officers be considered in relation to the nature of their duties?

As *judicial* or *executive*; and *as civil* or *military*.

3. How are offices in a State established?

By the constitution of the State, or the laws thereof.

4. Can officers in a State be created in any other way than by the constitution or the laws thereof?

No.

5. Can the Legislature of a State create new offices?

Yes; if it is not contrary to the constitution of the State.

6. Is the power of appointment to offices determined by the constitutions of the States respectively?

As to the most important offices the power of appointment is generally fixed by the constitution of the State; and as to other offices the mode of appointment or election is left to be provided for by law.

Qualifications of electors.

7. What are the qualifications of voters at elections?

In general, every white person, being a citizen of the United States, of the age of twenty-one years, who has resided within the State for one year preceding, who is an actual resident of the district or township in which the election is held, and who has paid a State or county tax, is entitled to vote at all elections. Absence from the State on public business does not affect the right to vote. In some of the States a property qualification is required. In other States the right of suffrage is *universal*; neither the payment of taxes, nor the owning of property being necessary to the exercise of it.

Elections.

8. How are elections held?

As to the *time*. In general, there is a general election held on one day every year throughout a State for Representatives in Congress, members of the State Legislature, and State and county officers, as may be necessary. Township, ward or borough officers are elected at a different time.

As to the *place*. In most of the States every township or parish, borough and ward is an election district; and elections are held at such places therein as may be directed by law.

As to the *manner*. In general, the electors vote personally by *ballot*, printed or written. In some States they vote *orally*, naming the candidate voted for.

The election is held at each district under the management of election officers, called judges and clerks. In some States the polls are kept open for only one day; and in others until all the votes offered are given. There are two clerks at each place of election, each of whom keeps a *poll-book*, or list of voters, in which the name of every voter is entered as he puts in his vote. The votes are given singly to one of the judges of the election, and by him then placed in a *ballot box*. The votes are not opened or inspected until after the polls are closed, when they are finally counted by the judges, and a statement thereof is made by the clerks. Certificates containing the names of the candidates, and the numcer of votes given them respectively, are then signed by the judges and clerks, and forwarded to the proper offices. These certificates are called *election returns*. Certificates of election are issued to the persons elected.

In general, in all elections by the people the choice is determined by a *plurality*, not a majority of votes; that is, the one of all the persons voted for who has the greatest number of votes is elected. In some of the States a majority of all the votes given is requisite to the election of particular officers.

Tenure, or duration of office.

9. How may officers be considered as to the tenure or duration of their offices?

As officers *at will*, liable to be removed at the pleasure of the appointing power; officers for a *term of years*, and officers *for life*, being on condition of *good behaviour*.

10. Are all State offices held on condition of good behaviour?

Yes; and the incumbents are liable to be removed on conviction of misbehaviour in office, or of any infamous crime.

Qualifications for office.

11. Who may be appointed or elected to office?

Generally all citizens, residents in the State; and, in some cases, previous residence in the State and county for a certain time is required, unless the person have been absent on public business.

12. Is a person convicted of duelling disqualified from holding office in some of the States?

Yes.

Religious sentiments.

13. Is there any disqualification for holding office on account of religious sentiments?

It is generally provided in the State constitutions, that no person who acknowledges the being of God and a future state of rewards and punishments shall be disqualified on account of his religious sentiments to hold any office.

Incompatibility of office.

14. What officers are incompatible?

It is generally provided in the constitution of a State, that no member of Congress, or officer of the United States, shall at the same time exercise any office in the State. In some of the States members of the Legislature cannot hold certain offices, and other offices are made by law incompatible.

Impeachment.

15. What is the provision in the State constitutions as to the impeachment of officers?

Generally, that all civil officers are liable to impeachment for misdemeanor in office. The meaning comprehends, probably, any violation of official duty, whether criminal or not. This liability to impeachment is, in theory, one of the strong safeguards for official integrity. The impeachment is presented by the House of Representatives, and tried before the Senate, of the State; the punishment to be removal from office, and disqualification to hold office in future. *p* In most instances, the party impeached, whether acquitted or convicted, is nevertheless liable to indictment and punishment according to law in the courts of justice.

Removal from office.

16. Are officers liable to be removed from office for misbehaviour?

It is generally provided, either by the State constitutions, or by law, that all civil officers may be removed on conviction of misbehaviour in office, or of any infamous crime.

17. What provision is there in some of the States as to removing officers on the address of the Legislatures respectively?

It is provided in some of the States that particular officers, as judges and some other officers, may be removed on the address of two-thirds of the Legislature for any reasonable cause which shall not be sufficient ground of impeachment.

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p As to impeachment, see Part the First, chap. iii. head Senate.

18. How may persons holding *offices at will* be removed?

By the appointing power, at the pleasure thereof, at any time. *q* It may be done, by dismissing the incumbent, superseding his commission, or appointing another person to the office in his place.

Oath of office.

19. Are all State officers required to be bound by an oath or affirmation of office?

It is provided by the federal constitution, "that all executive and judicial officers, both of the United States, and of the several States, shall be bound by oath or affirmation to support this constitution;" and generally by the constitution of each State, that all officers, executive and judicial, shall be bound by oath or affirmation, to support the constitution of the State, and to perform the duties of their offices with fidelity.

STATES, AND STATE OFFICERS.

20. How are the general affairs of a State conducted, and its laws administered?

By State officers.

21. How may State officers be divided?

Into civil and military; and the civil into executive and judicial.

22. What is the executive department of a State?

The Governor, in whom the supreme executive power is vested, and the other executive officers of the State.

23. What officers are called the Heads of Departments in a State?

Generally, there are in a State a Secretary of State, a State Auditor, a State Treasurer, and an Attorney General, who are called the Heads of Departments.

24. Are the Governor and Heads of Departments commonly called the State administration?

Yes.

25. How are State officers paid for their services?

Generally, by annual salaries, paid out of the treasury of the State.

Taxation and Revenue.

26. How are the expenses of the government generally borne?

By a revenue derived from State taxes, laid and collected under the laws thereof. *r* In some of the States there is a revenue derived from the sale of the public vacant lands of the State. Premiums paid to the State by banks and other corporations, for acts of incorporation, are, in some instances, sources of revenue. Some of the States hold

q See Part the First, chap. viii. p. 94; and Part the Second, chap. v. p. 144

r See Part the Third, chap. vii.

stock or shares in banks or other corporations, the dividends on which afford an annual income to the State.

In general the State legislatures have the power of taxation without restriction; except as to taxes or duties on imports, exports and tonnage, which they are prohibited from laying by the federal constitution. s In some of the State constitutions there are express prohibitions "to levy a *poll tax* for State or county purposes."

The various *kinds* of taxes in a State are, in general, as follows. I. *State taxes*, the rate of which is fixed by the legislature, generally for each year. II. *County taxes*, the rate of which the County Commissioners or trustees are authorized to fix, with certain restrictions. III. *Township taxes*, which the township trustees or supervisors may assess, not exceeding a certain rate. City and borough taxes are similar to these, assessed by the officers thereof, according to their charters or acts of incorporation. IV. In some States, the *school taxes*, which may be laid by the county trustees or commissioners, or district school directors, not exceeding a certain amount. V. The *poor tax*, which is fixed, not to exceed a certain rate, by the trustees or county commissioners, or the directors of the poor of the townships. The mode of assessing and collecting such taxes is referred to, more, fully, in this chapter, under the heads of the differant county and township officers.

The objects of taxation under the State laws are, in general, as follows: *Real estate*, including land and buildings, rated according to its assessed value: *Personal property;* including stocks in corporations, dividends of banks and other companies, debts bearing interest, the capital of merchants, manufacturers and brokers: offices, professions, occupations and trades: Licenses to auctioneers, innkeepers, pedlars and the like.

State loans and stocks.

27. What are State loans and stocks?

Certificates of indebtedness or obligations to pay money issued by a State, payable to the holder or order or assigns at fixed periods, and bearing interest payable semi-annually or annually.

Many of the States have borrowed money, to a large amount, for the purpose of internal improvement, or other extraordinary expenses, on such public loans or stocks.

Secretary of the State.

28. How is the Secretary of State appointed?

Generally, by the Governor of the State, with or without the consent of the Legislature.

29. What are the duties, in general, of the Secretary of State?

In his office is kept the great seal of the State. The originals of all the laws, and public documents, are filed and recorded in it, and

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s See Part the First, chap. iii, head "Revenue, Taxes," and chap. v. p. 80.

authentic copies thereof furnished, when required. All commissions to State officers, with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State, are issued from it; as are, also, all other documents requiring the great seal. A record of all the public acts and proceedings of the Governor is kept in this office. The returns of the election of State officers are filed there. And the Secretary of State superintends the publication and distribution of the laws of the State.

State Treasurer.

30. How is the State Treasurer appointed?

He is, generally, elected every year by the Legislature of the State; but, in some States, he is elected by the people.

31. What are, in general his duties?

To receive and have custody of the public money of the State; to superintend the collection of the State taxes and debts; and to pay warrants and orders upon the treasury, as directed by law. He is required to furnish an annual account of the receipts and expenditures of the State, and an estimate of future revenue.

State Auditor.

32. How is the State Auditor appointed?

He is generally, appointed by the Governor of the State, with the consent of the Senate or councel, or elected by the Legislature. In some States he is elected by the people. Such an officer, in some of the States, is called the Auditor General, or Comptroller, of the State.

33. What are the duties, in general, of the State Auditor?

To examine, adjust and settle all claims, bills and demands against the State; also the accounts of officers and agents entrusted with the collection, receipt, or disbursement of the public money; and to preserve the vouchers relative thereto, and keep a register of such accounts. It is, in general, his duty to present annually to the Governor or the Legislature an account of the finances of the State, with an estimate of expenses for the ensuing year, and of the accruing revenue and resources.

OF COUNTIES AND COUNTY OFFICERS.

34. How are the several States divided?

Into counties, and each county into townships in general. Cities, divided into wards, may exist in counties, and boroughs and towns in townships. In some States counties are divided into towns or parishes, boroughs and villages.

35. Is each county in a State organized with its officers, for the purpose of carrying on its local affairs, and the administration of the laws therein?

Yes.

36. What are county taxes?

Taxes assessed and collected by the proper county officers, in order to defray the expenses of the county. They are sometimes called county rates and levies.

37. What are the objects of expenditure of a county?

In general, the erection and repair of a court house, goal, and public offices, the pay of jurors and constables attending the courts, certain costs of court in criminal cases, the maintenance of criminals and convicts in the county gaol, building and repairing county bridges, the expenses of the general elections in the county, and like matters.

38. Is there, in some of the States, certain fines and forfeitures, imposed on persons convicted of crimes and offences, or otherwise incurred, directed to be paid into the treasuries of the counties for the use thereof.

Yes.

Courts.

39. Are there courts of justice held in each county?

There is generally a court for each county, with original jurisdiction, whose sessions are held at stated periods in every year; and, in most cases, a Court of review, or of Errors and Appeals; according to the judicial system of the State. The clerk or prothonotary of the court has his office in the county. There are sometimes several courts held in a county of differant jurisdictions, as to civil or criminal cases, or as to the amount or value in controversy.

40. Are there Justices of the Peace in each county?

There are Justices of the Peace, or like officers, in each county; and in some States, in each township or parish.

County officers.

41. What civil county officers are there?

Generally, there are in each county a Prothonotary or Clerk of the Courts, a Register, a Recorder of Deeds, Sheriff, Coroner, County Commissioners or trustees, County Treasurer, and County Auditors.

Prothonotaries or clerks of courts.

42. What are the duties of these officers?

In general to act as clerks of the courts, to record the proceedings, judgments, orders, and sentences of the courts, to file and preserve the records and papers thereof, to give authenticated copies of them, to issue judicial writs and process under the seals of the courts; and to perform various services prescribed by law.

Register.

43. What is the nature of the office?

All wills and testaments are generally required to be filed and recorded in the office of the Register of the county, who takes the probate of the same, and grants *letters testamentary* thereon. He grants letters of administration on the estates of intestates. In his

office also are filed the accounts of executors and administrators for settlement. These duties are performed in some of the States by the clerk of the county court.

Recorder.

44. What is the nature of the Recorder's office?

There is generally established by law a Recorder's office in every county in a State for the recording of deeds, conveyances and mortgages, and other instruments of writing. The Acts of Assembly of the States generally provide that if a deed for land and tenements is not recorded within six months, it shall be void against any subsequent *bona fide* purchaser without notice; and that a mortgage of land shall take effect, as against persons not parties to it and *bona fide* interested without notice, from the time of its being recorded, or its presentation for that purpose; and that deeds recorded shall be notice, from the time of their being recorded, to any subsequent purchaser. Copies or exemplifications of deeds recorded, certified by the Recorder under the seal of his office, are evidence of the deeds in courts of justice, and otherwise. *r*

Prosecuting Attornies.

45. What officers are prosecuting attornies?

The Attorney General of the State has the charge and superintendance, on behalf of the State, of criminal prosecutions and proceedings in general; and in most of the States, for the purpose of conducting them, he has his Deputies in the several counties or courts, who are appointed and removed by him at his pleasure. In some of the States, there are officers called Prosecuting Attornies, elected by the people, or otherwise appointed for each county, whose duty it is to manage and conduct, on the part of the State, all criminal prosecutions therein. *s*

Sheriffs.

46. What are the duties and powers of a Sheriff of a county?

He is the executive officer of the courts of the county, and as such authorized and bound to serve and execute all writs, orders, sentences and decrees thereof. He is also, by virtue of his office, conservator of the peace in the county, and empowered to suppress affrays and unlawful assemblies, and generally to preserve the peace; and to arrest all persons guilty of criminal offences, on personal view, and with or without warrant. Sheriffs are mostly keepers of the county gaols, except where it is otherwise ordered by law. There are various other duties, in relation to selecting and summoning jurors, to the elections held in the county, and other matters, required of him by Acts of Assembly. They may appoint deputies and goalers, under them, and remove them at pleasure; being responsible for their official acts.

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r See Part the Third, chap. vii.

s See Part the Second, chap. vi, head Attorney General.

47. Can Sheriffs require the assistance of the people, in suppressing riots and affrays, and arresting criminals?

Yes. For such purposes he can raise the *posse comitatus*, or power of the county, that is, such a number of men as is necessary for his assistance; and every person, of proper age, and not disabled, is bound to obey his summons, a refusal to do so being an indictable offence.

Coroners.

48. What are the duties in general of a Coroner?

To serve and execute all writs, orders and process of the courts, where the Sheriff of the county is a party or interested; and to exercise the office of Sheriff, in case of a vacancy in the office, and until another Sheriff shall be commissioned. He is a conservator of the peace, within the county, having the same power which the Sheriff as such possesses. He is also authorized to hold inquests *post mortem*, on the bodies of persons dying accidentally or by violence.

County Commissioners.

49. What officers are these?

Officers elected by the people of the county; who are authorized to assess and cause to be collected county taxes, as prescribed by law; to make contracts for the erection of a court house, gaol, county offices, and county bridges, and the repairs thereof; to direct the application of the funds of the county to the proper objects of expenditure; and to perform various other duties as provided by law.

County Treasurer.

50. What are the duties of the County Treasurer?

To receive and have the charge of the monies arising from the county taxes, and otherwise belonging to the county; and to pay out the same on the orders or warrants of the county commissioners or trustees, and in other manner, as directed by law.

County Auditors.

51. What officers are these?

They are officers, generally elected by the people, who are authorized to adjust and settle the accounts of the County Treasurer, and other persons entrusted with the receipt and expenditure of the money belonging to the county.

TOWNSHIPS AND TOWNSHIP OFFICERS.

52. What township officers are there, generally, in a State?

Justices of the Peace, supervisors of roads, overseers of the poor, constables, and township auditors. In some of the States, there is in each township a township clerk, and fence viewers, and other local officers.

Justices of the Peace.

53. How are Justices of the Peace appointed?

There are generally two or more Justices of the Peace, in each township; in most instances, elected by the people, for a term of years; though in some States, they are appointed by the Governor.

54. What is the nature of their powers and duties?

Justices of the Peace are judicial magistrates, of limited jurisdiction. Their ordinary jurisdiction is confined to criminal cases. They are by virtue of their offices *conservators* of the peace, within their proper townships or districts; and may suppress riots, affrays and disturbances of the peace. They have authority to receive complaints and informations, generally for all criminal offences; to issue their warrants and process, in the name of the State, for the arrest of all offenders, to take their examination and the testimony of witnesses in relation to the offence, and to commit them to gaol for trial before the proper court, or, except in capital cases and others of the highest grade, to admit them to bail for their appearance at the court to answer the charge against them. They may require sureties of the peace of dangerous persons, or those whom there is reasonable ground to suspect of an intention to commit a felony or any breach of the peace. In some of the States they have power to try and determine, and punish for, misdemeanors and offences of the lesser grade. They have, generally, power to administer oaths and affirmations, and to take the acknowledgement and proof of deeds, conveyances, and instruments of writing. There are often various duties imposed upon by special Acts of Assembly. And in a few States, they have conferred upon them, by statute, limited jurisdiction in civil suits at law, where the sum or value in controversy does not exceed a certain amount; there being an appeal from their judgments to some court of record. Their compensation is derived from fees of office allowed by law; which are included in the costs of prosecution or suit, or paid by the parties for whom the service is performed.

Supervisors of roads.

55. What officers are these?

There are generally in every township two or more supervisors of the roads and bridges; whose duty it is to attend to the opening and repairing the public roads and bridges, in their respective townships; and who have, for such purpose, authority to assess, levy and collect township taxes. They are elected by the people for one or more years.

56. How are public roads, generally, authorized to be laid out and opened?

By the proper court of the county, upon the petition of the citizens, in the manner prescribed by law.

Directors of the Poor.

57. What are their duties?

In the several States there is provision made by law for the support of the poor. The general system is, that every township or parish shall provide for its own poor; and supervisors are appointed, two or more in each township, by the election of the people, to receive the poor, and to take care of and provide for them; being authorized, for that purpose, to assess, levy and collect township taxes, called poor rates. Provision is generally made by law for compelling the particular township, where a poor person had his *last settlement* by residence for a certain period and other requisites, to support him. In some States the poor are maintained in county Poor Houses, built and kept up at the expense of the counties respectively.

Assessors.

58. What is the nature of their duties?

There is generally elected for each township one or more assessors, whose duty it is to make a list of all the taxable persons and property within their townships respectively, with a valuation of their property and estates, and to rate and assess the county taxes thereon, and make returns thereof to the proper county officers. These assessments are also used for assessing the different township taxes. In some States, the enumeration of taxables, and valuation of property, for State taxes, and other State purposes, are, also, made by the township assessors.

Collectors of taxes.

59. Who are collectors of taxes?

There is generally a collector of taxes for each township, appointed by the trustees or commissioners of the county, or elected by the people; who is empowered to receive, levy and collect, the county and township taxes, within the township.

Constables.

60. Who are constables?

They are civil executive officers, in every township. It is their duty to serve and execute all warrants, writs, and process of Justices of the Peace. They are *peace* officers, and authorized, with or without warrants from magistrates, to suppress riots, affrays and disturbances of the peace; and to arrest the offenders; and generally to arrest persons guilty of felonies, crimes and misdemeanors. It is their duty to give information, to a Justice of the Peace or other proper magistrate, of any crime or offence, committed in their townships, in their knowledge; to execute the warrants of magistrates for the arrest of criminals and offenders, or for committing them to gaol.

They are required to attend the stated sessions of the ordinary courts of the county, and to make returns thereto of certain offences, and violations of the law, that may have been committed in their respective townships, in their knowledge; and a certain number of

constables may be selected by the courts to attend their sessions, to preserve order, and act as ministerial officers of the court.

There are many other duties devolved on them by special Acts of Assembly, relative to elections, the roads, and various local matters in the townships.

Their compensation is derived from fees, perquisites, or costs allowed by law; and, in some cases, they receive daily pay from the county, for making their returns to the courts, and attending upon them at their sessions.

There are generally elected by the people two constables for each township, to serve for a year. *t*

School Directors.

61. What officers are school directors?

In those States where the common school system has been established, there are several school directors elected every year by the people for each township or school district. It is their duty to provide school houses, to employ teachers, and superintend the schools, as directed by law.

62. What is the common school system?

A system by which schools are established, by law, throughout a State for the education of the children of all persons gratuitously; the schools being supported by a permanent State fund, by appropriations out of the State treasury, or by taxes imposed on all the people of the particular districts; there being State officers appointed for the general superintendence of the schools, and school directors elected by the people of the districts respectively.

63. In what States is there a common school system established by law?

In Massachusetts, Connecticut, New Hampshire, Vermont, Maine, New York, Rhode Island, Pennsylvania, Ohio, Michigan.

Township Auditors.

64. What officers are township auditors?

In some of the States, there are auditors elected by the people for each township, every year, to adjust and settle the accounts of Supervisors of Roads, Overseers of the Poor, School Directors, and other persons, intrusted with the receipt and expenditure of money raised for township purposes.

Cities.

65. What is a city?

A large town incorporated as a city by a law of the State, with power in its inhabitants to make bye-laws or ordinances for their government in local matters, to appoint certain officers, and to levy and collect taxes for these purposes.

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t See Part the Second, chap. vi. head "Constables."

66. What officers are there, usually, in a city under its act of incorporation?

A mayor, recorder, members of city council, treasurer, high constable and assistant constables, street supervisors, watchmen, and the like.

67. How is a city generally divided?

Into wards, and precincts.

68. Is a city a part of the county in which it is situated?

Yes, generally.

69. Do the general laws of the State operate within a city?

Yes; except where it is otherwise provided by a law of the State.

70. What officers under the general laws of the State are there usually in a city?

Judges and other officers of the courts of justice; the several county officers, as Sheriff, Coroner, Recorder of Deeds, Register, County Commissioners, County Treasurer, and County Auditors; and in the wards respectively Aldermen, Constables, Asssessors of taxes and Collectors of taxes.

Mayor.

71. What officer is a mayor of a city?

A mayor is the chief magistrate of a city under its charter or Act of incorporation. He has judicial cognizance especially of prosecutions and suits for violations of the ordinances of the city. In some of these cases he is authorized to try and determine, and punish, by summary conviction; but generally he must proceed by issuing process, and holding to bail or committing the offender for trial at the proper court, which is mostly a Mayor's Court held by himself or the Recorder together with a certain number of the aldermen of the city.

In many of the States, the mayors of the cities are also vested, by statute, with the powers of *conservators of the peace* within their respective cities, and authorized to entertain complaints for offences at common law and under the general law of the State; to issue warrants and process thereon for the arrest of the offenders, and to admit them to bail, or commit them to gaol, in order to their trial before the proper court of justice; and in some cases to try, determine and punish in a summary manner.

There are, often, various incidental duties and powers appertaining, under statutes, to the office of a Mayor of a city; such as taking the acknowledgment and proof of deeds and other instruments of writing, administering oaths and affirmations, performing the marriage ceremony, and the like.

Aldermen.

72. What officers are Aldermen?

They are judicial magistrates in cities, having therein the same jurisdiction and powers which Justices of the Peace exercise in the several townships, under the laws of the State; and having, also, cognizance of suits and prosecutions, and various powers, under the ordinances of the city. There is, generally, one or more aldermen for each ward in a city; in some States appointed by the Governor of the State, but, in most cases, elected by the people for a term of years. In some cities they are members of the Mayor's Court of the city. Their compensation is derived from fees prescribed by law.

Boroughs.

73. What is a borough?

An incorporated town, the inhabitants of which are authorized by its charter or act of incorporation to make bye-laws or ordinances for the regulation of local matters therein, to elect borough officers, and to assess and collect taxes for such purposes.

74. How are towns incorporated as boroughs?

Generally, by an Act of the Legislature of the State. In some States provision is made by law for incorporating them by the courts of justice.

75. What officers are there, usually, in a borough?

A chief burgess, assistant burgess, members of the town council, treasurer, town clerk, high constable, and assistant constables

76. How is a borough generally divided?

Into wards.

77. Are boroughs parts of the townships in which they are situated?

Yes; except where it is otherwise provided by law.

78. Do the general laws of the State operate within a borough?

Yes; as in other parts of the township or county.

79. What officers under the general laws of the State are there within a borough?

Justices of the Peace, Constables, Assessors and Collectors of taxes.

THE UNITED STATES

CONSTITUTIONAL MANUAL.

CONSTITUTION

OF THE

COMMONWEALTH OF PENNSYLVANIA:

AS AMENDED BY THE CONVENTION OF ONE THOUSAND EIGHT HUNDRED AND THIRTY-SEVEN—THIRTY-EIGHT.

We, the People of the Commonwealth of Pennsylvania, ordain and establish this Constitution for its government.

ARTICLE I.

Section I. The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

Sect. II. The Representatives shall be chosen annually by the citizens of the city of Philadelphia and of each county respectively, on the second Tuesday of October.

Sect. III. No person shall be a Representative who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State three years next preceding his election, and the last year thereof an inhabitant of the district in and for which he shall be chosen a Representative, unless he shall have been absent on the public business of the United States or of this State.

Sect. IV. Within three years after the first meeting of the General Assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants shall be made in such manner as shall be directed by law. The number of Representatives shall, at the several periods of making such enumeration, be fixed by the Legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each: and shall never be less than sixty nor greater than one hundred. Each county shall have at least one Representative, but no county

hereafter erected shall be entitled to a separate representation until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one Representative agreeably to the ratio which shall then be established.

SECT. V. The Senators shall be chosen for three years by the citizens of Philadelphia and of the several counties at the same time, in the same manner, and at the same places where they shall vote for Representatives.

SECT. VI. The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the Legislature and apportioned among the districts formed as hereinafter directed, according to the number of taxable inhabitants in each; and shall never be less than one-fourth, nor greater than one-third, of the number of Representatives.

SECT. VII. The Senators shall be chosen in districts, to be formed by the Legislature; but no district shall be so formed as to entitle it to elect more than two Senators, unless the number of taxable inhabitants in any city or county shall, at any time, be such as to entitle it to elect more than two, but no city or county shall be entitled to elect more than four Senators; when a district shall be composed of two or more counties, they shall be adjoining; neither the city of Philadelphia nor any county shall be divided in forming a district.

SECT. VIII. No person shall be a Senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the State four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this State; and no person elected as aforesaid, shall hold said office after he shall have removed from such district.

SECT. IX. The Senators who may be elected at the first general election after the adoption of the amendments to the Constitution, shall be divided by lot into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that thereafter one-third of the whole number of Senators may be chosen every year. The Senators elected before the amendments to the Constitution shall be adopted, shall hold their offices during the terms for which they shall respectively have been elected.

SECT. X. The General Assembly shall meet on the first Tuesday of January, in every year, unless sooner convened by the Governor.

SECT. XI. Each House shall choose its Speaker and other officers; and the Senate shall also choose a Speaker *pro tempore*, when the Speaker shall exercise the office of Governor.

Sect. XII. Each House shall judge of the qualifications of its members. Contested elections shall be determined by a committee to be selected, formed and regulated in such manner as shall be directed by law. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided.

Sect. XIII. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the Legislature of a free State.

Sect. XIV. The Legislature shall not have power to enact laws, anulling the contract of marriage in any case where, by law, the courts of this Commonwealth are or may hereafter be empowered to decree a divorce.

Sect. XV. Each House shall keep a journal of its proceedings, and publish them weekly, except such parts as may require secrecy: and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals.

Sect. XVI. The doors of each House and of committees of the whole shall be open, unless when the business shall be such as ought to be kept secret.

Sect. XVII. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. XVIII. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the Commonwealth. They shall in all cases, except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same. And for any speech or debate in either House, they shall not be questioned in any other place.

Sect. XIX. No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth which shall have been created, or the emoluments of which shall have been increased during such time: and no member of Congress or other person holding any office (except of attorney at law and in the militia) under the United States or this Commonwealth, shall be a member of either House during his continuance in Congress or in office.

Sect. XX. When vacancies happen in either House, the Speaker shall issue writs of election to fill such vacancies.

Sect. XXI. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

Sect. XXII. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sect. XXIII. Every bill which shall have passed both Houses shall be presented to the Governor. If he approve he shall sign it, but if he shall not approve he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large upon their journals and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent with the objections to the other House, by which likewise it shall be re-considered, and if approved by two-thirds of that House, it shall be a law. But in such cases the votes of both Houses shall be determined by yeas and nays, and the names of persons voting for or against the bill shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

Sect. XXIV. Every order, resolution or vote to which the concurrence of both Houses may be necessary (except on a question of adjournment) shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses according to the rules and limitations prescribed in case of a bill.

Sect. XXV. No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months previous public notice of the intended application for the same in such manner as shall be prescribed by law. Nor shall any charter for the purposes aforesaid, be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same, whenever in their opinion it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted, shall create, renew or extend the charter of more than one corporation.

ARTICLE II.

Sect. I. The Supreme Executive power of this Commonwealth shall be vested in a Governor.

Sect. II. The Governor shall be chosen on the second Tuesday of October, by the citizens of the Commonwealth, at the places

where they shall respectively vote for Representatives. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature. The person having the highest number of votes shall be Governor. But if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

Sect. III. The Governor shall hold his office during three years from the third Tuesday of January next ensuing his election, and shall not be capable of holding it longer than six in any term of nine years.

Sect. IV. He shall be at least thirty years of age, and have been a citizen and an inhabitant of this State seven years next before his election, unless he shall have been absent on the public business of the United States or of this State.

Sect. V. No member of Congess or person holding any office under the United States or this State shall exercise the office of Governor.

Sect. VI. The Governor shall at stated times receive for his services a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected.

Sect. VII. He shall be commander-in-chief of the army and navy of this Commonwealth, and of the militia, except when they shall be called into the actual service of the United States.

Sect. VIII. He shall appoint a Secretary of the Commonwealth during pleasure, and he shall nominate, and, by and with the advice and consent of the Senate, appoint all judicial officers of courts of record, unless otherwise provided for in this Constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the Senate, by granting commissions which shall expire at the end of their next session: *Provided*, That in acting on Executive nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays.

Sect. IX. He shall have power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment.

Sect. X. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Sect. XI. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he shall judge expedient.

Sect. XII. He may, on extraordinary occasions, convene the General Assembly; and in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

Sect. XIII. He shall take care that the laws be faithfully executed.

Sect. XIV. In case of the death or resignation of the Governor, or of his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified; but in such case another Governor shall be chosen at the next annual election of Representatives, unless such death, resignation or removal, shall occur within three calender months immediately preceding such next annual election, in which case a Governor shall be chosen at the second succeeding annual election of Representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next ensuing the election of Governor, the Governor of the last year or the Speaker of the Senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be duly qualified as aforesaid.

Sect. XV. The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law.

ARTICLE III.

Sect. I. In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had previously been a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district, and paid taxes, as aforesaid, shall be entitled to vote, after residing in the State six months: *Provided*, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes.

Sect. II. All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*.

SECT. III. Electors shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from them.

ARTICLE IV.

SECT. I. The House of Representatives shall have the sole power of impeaching.

SECT. II. All impeachments shall be tried by the Senate: when sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SECT. III. The Governor, and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honour, trust or profit, under this Commonwealth: the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment, and punishment according to law.

ARTICLE V.

SECT. I. The judicial power of this Commonwealth shall be vested in a Supreme Court, in Courts of Oyer and Terminer and General Gaol Delivery, in a Court of Common Pleas, Orphans' Court, Register's Court, and a Court of Quarter Sessions of the Peace, for each county; in justices of the peace, and in such other courts as the Legislature may, from time to time, establish.

SECT. II. The judges of the Supreme Court, of the several Courts of Common Pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the Governor, and by and with the consent of the Senate appointed and commissioned by him. The judges of the Supreme Court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several Courts of Common Pleas, and of such other courts of record, as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the Courts of Common Pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature. The judges of the Supreme Court, and the presidents of the several Courts of Common Pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth.

Sect III. Until otherwise directed by law, the Courts of Common Pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

Sect. IV. The jurisdiction of the Supreme Court shall extend over the State; and the judges thereof, shall, by virtue of their offices, be justices of Oyer and Terminer and General Gaol Delivery, in the several counties.

Sect. V. The judges of the Court of Common Pleas, in each county, shall, by virtue of their offices, be justices of Oyer and Terminer and General Gaol Delivery, for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum: but they shall not hold a Court of Oyer and Terminer, or Gaol Delivery, in any county, when the judges of the Supreme Court, or any of them, shall be sitting in the same county. The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court.

Sect. VI. The Supreme Court, and the several Courts of Common Pleas, shall, beside the powers heretofore usually exercised by them, have the power of a Court of Chancery, so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are *non compotes mentis*. And the Legislature shall vest in the said courts such other powers to grant relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

Sect. VII. The judges of the Court of Common Pleas of each county, any two of whom shall be a quorum, shall compose the Court of Quarter Sessions of the Peace, and Orphans' Court thereof; and the register of wills, together with the said judges, or any two of them, shall compose the Register's Court of each county.

Sect. VIII. The judges of the Courts of Common Pleas shall, within their respective counties, have the like powers with the judges of the Supreme Court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

Sect. IX. The president of the court in each circuit within such circuit, and the judges of the Court of Common Pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters.

Sect. X. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

SECT. XI. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

ARTICLE VI.

SECT. I. Sheriffs and coroners shall, at the times and places of election of Representatives, be chosen by the citizens of each county. One person shall be chosen for each office, who shall be commissioned by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified; but no person shall be twice chosen or appointed sheriff, in any term of six years. Vacancies in either of the said offices shall be filled by an appointment, to be made by the Governor, to continue until the next general election, and until a successor shall be chosen and qualified as aforesaid.

SECT. II. The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

SECT. III. Prothonotaries of the Supreme Court shall be appointed by the said court for the term of three years, if they so long behave themselves well. Prothonotaries and clerks of the several other courts, recorders of deeds, and registers of wills, shall at the times and places of election of Representatives, be elected by the qualified electors of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. The Legislature shall provide by law the number of persons in each county, who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid.

SECT. IV. Prothonotaries, clerks of the peace and Orphans' Courts, recorders of deeds, registers of wills, and sheriffs, shall keep their offices in the county town of the county in which they respectively shall be officers, unless when the Governor shall, for special reasons, dispense therewith, for any term not exceeding five years after the county shall have been erected.

SECT. V. All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal, and signed by the Governor.

SECT. VI. A State Treasurer shall be elected annually, by joint vote of both branches of the Legislature.

SECT. VII. Justices of the peace or aldermen shall be elected in the several wards, boroughs, and townships at the time of the election of constables by the qualified voters thereof, in such number as shall be directed by law, and shall be commissioned by the Governor for a term of five years; but no township, ward or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough.

SECT. VIII. All officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law. No person shall be appointed to any office within any county, who shall not have been a citizen and an inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. No member of Congress from this State, or any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State, to which a salary is, or fees or perquisites are, by law annexed; and the Legislature may by law declare what State officers are incompatible. No member of the Senate or of the House of Representatives shall be appointed by the Governor to any office during the term for which he shall have been elected.

SECT. IX. All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehaviour in office or of any infamous crime.

SECT. X. Any person who shall, after the adoption of the amendments proposed by this Convention to the Constitution, fight a duel, or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of the right of holding any office of honour or profit in this State, and shall be punished otherwise in such manner as is, or may be, prescribed by law; but the Executive may remit the said offence and all its disqualifications.

ARTICLE VII.

SECT. I. The Legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the State, in such manner that the poor may be taught gratis.

SECT. II. The arts and sciences shall be promoted in one or more seminaries of learning.

SECT. III. The rights, privileges, immunities and estates of religious societies and corporate bodies, shall remain as if the Constitution of this State had not been altered or amended.

SECT. IV. The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken.

ARTICLE VIII.

Members of the General Assembly, and all officers, executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity.

ARTICLE IX.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE, That

SECT. I. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SECT. II. All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness: for the advancement of these ends they have, at all times, an unalienable and indefeasible right to alter, reform or abolish their government, in such manner as they may think proper.

SECT. III. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given, by law, to any religious establishments or modes of worship.

SECT. IV. No person who acknowledges the being of a God and a future state of rewards and punishments, shall on account of his religious sentiments be disqualified to hold any office or place of trust or profit under this Commonwealth.

SECT. V. Elections shall be free and equal.

SECT. VI. Trial by jury shall be as heretofore, and the right thereof remain inviolate.

SECT. VII. The printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch of government: And no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely

speak, write and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence: And in all indictments for libels the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Sect. VIII. The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures: And no warrant to search any place, or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Sect. IX. In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land.

Sect. X. No person shall, for any indictable offence, be proceeded against criminally by information; except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; or by leave of the court, for oppression and misdemeanor in office. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being made.

Sect. XI. All courts shall be open, and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases, as the Legislature may by law direct.

Sect. XII. No power of suspending laws shall be exercised, unless by the Legislature, or its authority.

Sect. XIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Sect. XIV. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

SECT. XV. No commission of Oyer and Terminer or Gaol Delivery shall be issued.

SECT. XVI. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECT. XVII. No *ex post facto* law, nor any law impairing contracts, shall be made.

SECT. XVIII. No person shall be attainted of treason or felony by the Legislature.

SECT. XIX. No attainder shall work corruption of blood; nor, except during the life of the offender, forfeiture of estate to the Commonwealth; the estates of such persons as shall destroy their own lives, shall descend or vest as in the case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECT. XX. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance.

SECT. XXI. The right of citizens to bear arms, in defence of themselves and the State, shall not be questioned.

SECT. XXII. No standing army shall, in time of peace, be kept up, without the consent of the Legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SECT. XXIII. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

SECT. XXIV. The Legislature shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer term than during good behaviour.

SECT. XXV. Emigration from the State shall not be prohibited.

SECT. XXVI. To guard against transgressions of the high powers which we have delegated, WE DECLARE, That every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate.

ARTICLE X.

SECT. I. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the

Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least one newspaper in every county in which a newspaper shall be published; and if in the Legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately and distinctly.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained, That

Sect. I. All laws of this Commonwealth in force at the time when the said alterations and amendments in the said Constitution shall take effect, and not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

Sect. II. The alterations and amendments in the said Constitution shall take effect from the first day of January, eighteen hundred and thirty-nine.

Sect. III. The clauses, sections, and articles of the said Constitution, which remain unaltered, shall continue to be construed and have effect as if the said Constitution had not been amended.

Sect. IV. The General Assembly which shall convene in December, eighteen hundred and thirty-eight, shall continue its session as heretofore, notwithstanding the provision in the eleventh section of the first article, and shall at all times be regarded as the first General Assembly under the amended Constitution.

Sect. V. The Governor who shall be elected in October, eighteen hundred and thirty-eight, shall be inaugurated on the third Tuesday in January, eighteen hundred and thirty-nine; to which time the present executive term is hereby extended.

SECT. VI. The commissions of the judges of the Supreme Court, who may be in office on the first day of January next, shall expire in the following manner: The commission which bears the earliest date shall expire on the first day of January, Anno Domini one thousand eight hundred and forty-two; the commission next dated shall expire on the first day of January, Anno Domini one thousand eight hundred and forty-five; the commission next dated shall expire on the first day of January, Anno Domini one thousand eight hundred and forty-eight; the commission next dated shall expire on the first day of January, Anno Domini one thousand eight hundred and fifty-one; and the commission last dated shall expire on the first day of January, Anno Domini one thousand eight hundred and fifty-four.

SECT. VII. The commissions of the president judges of the several judicial districts, and of the associate law judges of the first judicial district, shall expire as follows: The commissions of one-half of those who shall have held their offices ten years or more at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February, one thousand eight hundred and thirty-nine; the commissions of the other half of those who shall have held their offices ten years or more at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February, one thousand eight hundred and forty-two; the first half to embrace those whose commissions shall bear the oldest date. The commissions of all the remaining judges who shall not have held their offices for ten years at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February next, after the end of ten years from the date of their commissions.

SECT. VIII. The recorders of the several Mayors' Courts, and other criminal courts in this Commonwealth, shall be appointed for the same time, and in the same manner, as the president judges of the several judicial districts: of those now in office, the commission oldest in date shall expire on the twenty-seventh day of February, one thousand eight hundred and forty-one, and the others every two years thereafter according to their respective dates: those oldest in date expiring first.

SECT. IX. The Legislature, at its first session under the amended Constitution, shall divide the other associate judges of the State into four classes. The commissions of those of the first class shall expire on the twenty-seventh day of February, eighteen hundred and forty; of those of the second class on the twenty-seventh day of February, eighteen hundred and forty-one; of those of the third class on the twenty-seventh day of February, eighteen hundred and forty-two; and those of the fourth class on the twenty-seventh day of February, eighteen hundred and forty-three. The said classes, from the first to the fourth, shall be arranged according to the seniority of the commissions of the several judges.

SECT. X. Prothonotaries, clerks of the several courts (except of the Supreme Court) recorders of deeds and registers of wills, shall be first elected under the amended Constitution, at the election of Representatives in the year eighteen hundred and thirty-nine, in such manner as may be prescribed by law.

SECT. XI. The appointing power shall remain as heretofore, and all officers in the appointment of the executive department shall continue in the exercise of the duties of their respective offices until the Legislature shall pass such laws as may be required by the eighth section of the sixth article of the amended Constitution, and until appointments shall be made under such laws; unless their commissions shall be superseded by new appointments, or shall sooner expire by their own limitations, or the said offices shall become vacant by death or resignation, and such laws shall be enacted by the first Legislature under the amended Constitution.

SECT. XII. The first election for aldermen and justices of the peace shall be held in the year eighteen hundred and forty, at the time fixed for the election of constables. The Legislature at its first session under the amended Constitution shall provide for the said election and for subsequent similar elections. The aldermen and justices of the peace now in commission, or who may in the interim be appointed, shall continue to discharge the duties of their respective offices, until fifteen days after the day which shall be fixed by law for the issuing of new commissions, at the expiration of which time their commissions shall expire.

In testimony that the foregoing is the amended Constitution of Pennsylvania, as agreed to in Convention, We, the officers and members of the Convention, have hereunto signed our names, at Philadelphia, the twenty-second day of February, Anno Domini one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-second.

JOHN SERGEANT, *President.*

Daniel Agnew,	Jacob Dillinger,	W. M. Meredith,
Wm. Ayres,	Jas. Donagan,	James Merrill,
M. W. Baldwin,	J. R. Donnell,	Levi Merkel,
Ephraim Banks,	Joseph M. Doran,	William L. Miller,
John Y. Barclay,	James Dunlop,	James Montgomery,
Jacob Barndolar,	Thomas Earle,	Christian Meyers,
Chas. A. Barnitz,	D. M. Farrelly,	D. Nevin,
Andrew Bedford,	Robert Fleming,	Wm. Overfield,
Thos. S. Bell,	Walter Forward,	Hiram Payne,
James Cornell Biddle,	John Foulkrod,	Matth. Pennypacker,
Lebbeus L. Bigelow,	Joseph Fry, Jr.	James Pollock,
Sam. C. Bonham,	John Fuller,	James Porter,
Chas. Brown,	John A. Gamble,	Jas. Madison Porter,
Jeremiah Brown,	William Gearhart,	Samuel A. Purviance,

William Brown,
Pierce Butler,
Samuel Carey,
George Chambers,
John Chandler,
Jos. R. Chandler,
Ch. Chauncey,
Nathaniel Clapp,
James Clarke,
John Clarke,
William Clark,
Samuel Cleavinger,
A. J. Cline,
Lindley Coates,
R. E. Cochran,
Thos. P. Cope,
Joshua F. Cox,
Walter Craig,
Richard M. Crain,
George T. Crawford,
Cornelius Crum,
John Cummin,
Tho. S. Cunningham,
William Curll,
William Darlington,
Mark Darrah,
Harmar Denny,
John Dickey,
Joshua Dickerson,
David Gilmore,
Virgil Grenell,
William L. Harris,
Thomas Hastings,
Ezra S. Hayhurst,
Wm. Hays,
Abm. Helffenstein,
M. Henderson,
William Henderson,
William Hiester,
William High,
Joseph Hopkinson,
John Houpt,
Jabez Hyde,
Chas. Jared Ingersoll,
Phs. Jenks,
George M. Keim,
James Kennedy,
Aaron Kerr,
Joseph Konigmacher,
Jacob Krebs,
H. G. Long,
David Lyons,
Alexander Magee,
Joel K. Mann,
Benjamin Martin,
John J. M'Cahen,
E. T. M'Dowell,
James M'Sherry,
E. C. Reigart,
A. H. Read,
George W. Riter,
John Ritter,
H. Gold Rogers,
Samuel Royer,
James M. Russell,
Daniel Saeger,
John Morin Scott,
Tobias Sellers,
G. Seltzer,
George Serrill,
Henry Scheetz,
George Shilleto,
Thomas H. Sill,
George Smith,
William Smyth,
Joseph Snively,
Jno. B. Sterigere,
Jacob Stickel,
Eben. W. Sturdevant,
Thomas Taggart,
Morgan J. Thomas,
James Todd,
Thomas Weaver,
Jacob B. Weidman,
R. G. White,
George W. Woodward,
R. Young.

Attest: S. SCHOCH, *Secretary.*

G. L. Fauss, J. Williams, } *Assistant Secretaries.*

THE UNITED STATES

CONSTITUTIONAL MANUAL.

PART THE THIRD.

Of the Government of Pennsylvania.

CHAPTER I.

OF THE GOVERNMENT OF PENNSYLVANIA, IN GENERAL.

1. What is the form of government of Pennsylvania?

A representative democracy; the State being a republic. *a*

A State, in its organized political capacity, is a government. The government of a country is, in general, that power in it which makes the laws, and carries them into effect. In a republican State, the powers of government being distributed among different departments, those departments constitute its government.

2. Why is Pennsylvania called a "commonwealth?"

Because it is a government formed by the whole people, or in which the people rule, or have the supreme power.

3. What is the general fundamental principle of the government?

That the supreme power is in the people; or that they have a right to establish a government, and make laws for the regulation of their affairs, as they see proper.

4. What is the principle of representation in the government?

It is a leading principle of the government, by which the people exercise their supreme power through their representatives or delegates.

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a See Part the First, chap. i, as to the different forms of government.

5. When did Pennsylvania become a free and independent State?

Formerly a colony of Great Britain, it became a free and independent State, with the other British colonies in America, by their Declaration of Independence on the fourth day of July 1776.

Before the American revolution Pennsylvania was a colony of Great Britain, dependent upon, and owing allegiance to the British king. It was governed, in respect to its interior polity, by a colonial government under the patent or charter granted, in 1681, by the king to William Penn, its founder. This was called a Proprietary government, as distinguished from those of most of the other British colonies. *b*

After the declaration of independence on the 4th of July 1776, the first constitution of Pennsylvania was formed by a convention of delegates of the people, in September of that year. On the second of September 1790, another constitution was adopted; and in 1838 the present amended constitution.

6. How was the government of this Commonwealth established? *c*

By the people, ordaining and establishing a written constitution for their government.

7. When was the first constitution of Pennsylvania formed, under the present system of government of the United States? *d*

In the year 1790.

8. When was the present amended constitution of Pennsylvania adopted?

Formed by a convention of the delegates of the people, it was adopted as the Act of the people, by their direct votes, in the year 1838. It was thus adopted by the people, at the general election in that year.

9. What is the relation of this State to the government of the United States of America?

The people of the United States, as individuals, form the Union, and are the citizens thereof; and each State, in its collective capacity, is represented therein, and has an important connection with it for the purposes of the general government. *e*

10. Have the people of the State parted with a portion of their supreme power to the Union, by the federal constitution?

Yes.

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b See Part the First, chap. i. p. 19.

c See Part the First, chap. i, as to the formation of the government of the United States.

d See Part the First, chap. ii.

e See Part the First, chap. i.

11. What powers, in general, have the people of the State parted with to the Union, so that they cannot exercise them in the State government?

All the "powers delegated to the United States," and vested in them exclusively, or that may be exercised by them exclusively, or "prohibited to the States severally," by the federal constitution.

12. Are all the "powers not delegated to the United States," nor "prohibited to the States severally, by the federal constitution, reserved to the people of the State?

Yes.

13. Can the people of the State confer upon its government "powers prohibited to the States severally" by the federal constitution?

No.

14. Are all acts of the State government, or of the people, and laws passed by them, which are contrary to the provisions of the federal constitution, or the laws of Congress in pursuance thereof, unconstitutional and void?

Yes; the federal constitution, and the laws of Congress passed in pursuance of it, are the supreme law of the land, and any law contrary thereto is unconstitutional and void.

15. Is the State, then, completely sovereign?

No; it is not, in reference to its relations to the Union, and to the federal government.

16. Is the State sovereign and independent in the exercise of its powers consistently with the provisions of the constitution of the United States?

Yes.

17. For what objects, in general, were the federal government and the several State governments, respectively designed?

The federal government was designed to unite the people of all the United States into one nation, for national purposes, and the State governments were intended to regulate, severally, their local and municipal affairs. *f*

18. How may the provisions of the constitution of Pennsylvania be classified?

Under seven heads; first, those which relate to the legislative department of the government; secondly, those which relate to the executive department; thirdly, those which relate to the judicial department; fourthly, those which relate to elections in general, and to the rights and qualifications of electors; fifthly, those which relate to the election and appointment of officers, their tenure of office, and terms of service; sixthly, the Declaration of Rights, containing certain general principles limiting the powers of government and defin-

f See Part the First, chap. i.

ing the rights reserved to the people; and seventhly, those provisions which relate to the manner of making amendments to the constitution.

19. Is the government of Pennsylvania, then, one of limited powers?

Yes.

20. Are there powers prohibited to the government of the State, by the constitution of the State?

Yes.

21. What is the rule of construction as to the powers of government conferred by the State constitution?

That the grant of powers is general, and the prohibition of them special.

22. In the constitution of the State are all powers, proper and necessary to the government of a free State, considered to be conferred by the people on the State government, which are not expressly or impliedly prohibited?

Yes.

23. Are the powers of the State government distributed among several distinct departments?

Yes.

24. What are the several departments of the State government?

The legislative department, the executive department, and the judicial department.

25. What are meant by the powers of the State government?

The powers vested by the State constitution in all or any of the departments of the government.

26. Are these departments co-ordinate branches of the State government, having severally seperate powers and duties, and acting in their proper spheres independently of each other?

Yes.

27. Are these departments so organized, and so connected in relation to the objects of their powers, as to be constitutional checks upon each other, and the means of confining all of them within the limits of their respective functions?

Yes.

"It is on the preservation of the lines which seperate the cardinal branches of the government, that the liberties of the citizens depend; for a consolidated sovereignty, in whatever form, is a despotism in so far as it subjects the governed, not to prescribed rules of action, to which he may safely square his conduct before-hand, but to the unsettled will of the ruling power, which cannot be foreseen; and a government becomes consolidated in proportion as its legislative branch, or any one of its departments, abandons its own functions, or usurps those which have been vested elsewhere.

"In the very constitution of things the whole people cannot assemble together to exercise their sovereign power in person; and it is not to be regretted that they cannot, for their rule being untrammelled by any thing but their will, would be as arbitrary and fitful in its exercise as any other uncontrolled domination. When they delegate it to an undivided agency, they slip their hold on it, and in turn become its slaves." *g*

28. Is each of these departments the representative of the people of the State, deriving its authority under the constitution from them as the source of power.

Yes.

29. From the nature of its duties does there belong to the judicial department, in the due administration of justice, the power of interpreting the State constitution, and of deciding upon the validity of the acts of the other departments?

Yes.

30. Have the people power to alter the form of government of the State?

Yes. It is a principle of our government that the people have the inherent right to abolish, alter and amend the form of government at their pleasure.

31. Is there a mode provided in the State constitution for altering or amending it?

Yes. *Cons. of Pa. Art.* X. *h*

32. Are the United States bound, by the federal constitution, to guarantee to every State in the Union a republican form of government?

Yes.

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g Opinion of Chief Justice Gibson, in 5 Watts and Sergeants' Reports, p. 281.

h See, further on, chap. iii. quest. 7.

CHAPTER II.

OF THE MUNICIPAL LAW OF PENNSYLVANIA, IN GENERAL.

1. What is the municipal law *a* of Pennsylvania?

It is the law or system of rules by which the people of the commonwealth is governed.

2. How is the municipal law of Pennsylvania divided?

Into *unwritten* and *written*, or *common* and *statute* law.

3. What is the common law of Pennsylvania?

"Those principles, usages and rules, in the law, which do not rest for their authority upon express act of the legislature, but long custom and universal reception.

"The common law of England has always been in force in this State, so far as is consistant with the nature of our government, and the principles which have always regulated the settlement of the country, subject to the various modifications introduced by the several acts of Assembly. 1 *Dallas' Reports*, *p.* 67, 144, 444."

"Justice was at an early period administered in the province according to the provisions of the common law of England, though it was never transplanted thither in a body. It was always adjudged to be obligatory, so far as it was considered applicable to the new relations in which the people were placed. By the revolution of 1776, all connection between this government and Great Britain was dissolved, and judicial power previously existing was abrogated. By the Act of Assembly of the 28th January 1777, "the common law and such of the statutes of England as had heretofore been in force in the said province," with particular exceptions, were declared to be in force and binding on the inhabitants of the State." 1 *Pa. Blackstone*, *p.* 39.

"The unwritten or common law includes, general customs, which are the universal rule throughout the State, and form the common law in its stricter and more usual signification; particular customs, which have been recognized by judicial decisions; and certain acts of parliament of Great Britain in force in Pennsylvania.

"The great and essential principles, as well as an infinite number of minuter particulars, constituting the rules of civil conduct, and by which civil rights are regulated, in courts of justice, are no where set down in any written statute or ordinance, but depend upon usage and the common law for support. This is that law, by which, for the most

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a See Part the Second, chap. ii.

part, courts of justice are guided and directed, in their particular proceedings; the forms of their writs are regulated; the manner of issuing them; the modes of their service and return; the manner of preparing for trial; procuring witnesses; keeping records; the manner of conducting a trial; and which determines the manner and form of acquiring and transferring property; the solemnities and obligations of contracts; the rules of expounding deeds, wills, and acts of Assembly; the several species of temporal offences, with the manner and degree of their punishment; and a great many other particulars, which diffuse themselves as extensively as the ordinary distribution of justice requires." 1 *Pa. Blackstone, p.* 41. 42.

"The acts of parliament of Great Britain made before the settlement of Pennsylvania have no force here, except in some particular cases by adjudications of courts and established usage; and those made since the settlement of Pennsylvania have no force here except the colonies are expressly named therein. 1 *Dallas' Reports, p.* 67."

"The law of nations always formed a part of our municipal law. 1 *Dallas' Reports, p.* 114, 120."

"Equity principles are incorporated as part of the common law of the State. 1 *Dallas' Reports, p.* 211."

"The best definition of common law in Pennsylvania is that referred to in Dallas' Reports, p. 211, viz: common right, common sense, common justice."

"The principles from which these results are to be derived, are found in the books of reports, opinions of persons skilled in the law, elementary treatises, and the daily practice in courts; in the absence of any positive statute, or of any decided case, sound discretion, governed by the principles of equity and good sense, diligently compared with analogous doctrines, must constitute the law." 1. *Pa. Blackstone, p.* 40.

4. What is the written law of Pennsylvania?

The written law of Pennsylvania includes, the constitution of the United States; the constitution of Pennsylvania; the acts of Congress; the acts of the Legislature of Pennsylvania.

The constitution of the United States, within the sphere of its operation, is the supreme law of the land. In the absence of the United States constitution, and of any act of Congress in pursuance of it, the constitution of the Commonwealth is the supreme law of the land.

The rules to be observed with regard to the construction of statutes *b* are these:

1. There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy. And it is the business of judges so to construe the act as to suppress the mischief, and advance the remedy. 2. A statute which treats of

b See Part the Second, chap. ii.

things or subjects of an inferior rank cannot by any general words be extended to those of a superior rank. 3. Penal statutes must be construed strictly. 4. Statutes against fraud are to be liberally and beneficially expounded. 5. One part of a statute must be construed by another, that the whole may if possible, stand. 6. A *saving* totally repugnant to the body of the act is void. 7. When the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one. The latter part of this rule is understood only to take effect, when the latter statute is couched in negative terms, or where its matter is so clearly repugnant as necessarily to imply a negative. 8. If a statute that repeals another is itself repealed, the first statute is thereby repealed, without any formal words for that purpose. 9. Acts of the legislature derogatory to the power of a subsequent legislature bind not. 10. Acts of the legislature that are impossible to be performed are of no validity: and if there arise out of them any absurd consequences, manifestly contrary to common reason they are, with regard to those consequences, void. 11. All the acts of Congress infringing or violating the principles of the federal constitution are void. And all acts of the legislature of this Commonwealth which violate, infringe upon, or impair the federal constitution, or any law of the United States made in pursuance of it, or any treaty made under the authority of the United States, or which are in direct violation of the constitution of this Commonwealth, are not obligatory. 1. *Pa. Blackstone, p.* 65, *et seq.*

By the Act of Assembly of the 21st of March 1806, Sect. XIII: In all cases where a remedy is provided, or duty enjoined, or any thing directed to be done, by any act or acts of Assembly of this commonwealth, the directions of the said Acts shall be strictly pursued, and no penalty shall be inflicted, nor any thing be done, agreeably to the provisions of the common law, in such cases, further than is necessary for carrying such act or acts into effect.

If a proceeding were imperfect, when the act of Assembly under which it began expired, it cannot be completed afterwards. 1 *Watts' Reports, p.* 258.

An indictment cannot be supported for an offence under a statute which is repealed before the prosecution was instituted, unless the repealing act have a saving clause.

The expiration of a statute by its own limitation *ipso facto* revives a statute which had been repealed and supplied by it. 6 *Wharton's Digest, p.* 294.

A subsequent statute, revising the subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must operate to repeal the former statute to that extent to which its provisions are revised and supplied. 1 *Ashmead's Reports, p.* 179.

An Act of Assembly will not be construed to repeal by implication an express enactment, unless there be a clear and strong inconsistency between them. 6 *Watts and Sergeants' Reports, p.* 209.

CHAPTER III.

OF THE DECLARATION OF RIGHTS OF PENNSYLVANIA.

1. What is the declaration of Rights?

That part of the State constitution, in which are contained certain general principles and provisions, in relation to the rights of the people, and the powers of government, is called the Declaration or Bill of Rights. *Cons. of Pa. Art.* IX.

There are similar Declarations of Rights in the constitutions of the other States. And in the constitution of the United States there are provisions, declaring such rights, and designed to secure them. *a*

2. Why was the Declaration of Rights, in the State constitution, made?

"That the general, great and essential principles of liberty and free government may be recognized and unalterably established." *Cons. of Pa. Art.* IX. *Preamble.*

3. Of what force are these principles and provisions?

They are binding on all the departments of government, and on the people, in all cases, above all other laws of the State.

4. What is the provision of the State constitution as to their force and authority?

"To guard against the transgression of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate." *Cons. of Pa. Art.* IX. *sect.* XXVI.

Equality of rights.

5. What is the declared principle in the State constitution as to the equal rights of all men?

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their happiness." *Cons. of Pa. Art.* IX. *sect.* I.

The same principle is avowed in the Declaration of Independence of the United States, of July 4, 1776. *b*

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a See Part the Second, chap. iii., and Part the First, chap. vii.

b See Part the Second, chap. iii. q. 8. 9. 10.

The supreme power of the people.

6. What is the declared principle in the State constitution as to the supreme power of the people?

"All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have, at all times, an inalienable and indefeasible right to alter, reform and abolish their government, in such manner, as they may think proper. *Cons. of Pa. Art.* IX. *sect.* II.

7. Has the constitution of the State provided a mode in which the power of the people to alter or amend their government may be exercised?

Yes; it has provided that amendments to the constitution may be made in the manner prescribed in it. *Cons. of Pa. Art.* X.

It appears that, independently of this provision, the people may, from their original and supreme power, determine the manner in which amendments to the constitution may be considered and adopted.

As to religion and the rights of conscience.

8. What is the declared principle in the State constitution as to the rights of conscience and the support of a religious establishment?

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled, to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given, by law, to any religious establishments or modes of worship." *Cons. of Pa. Art.* IX. *sect.* III.

9. What other provision on this subject is there in the State constitution?

"No person who acknowledges the being of a God and a future state of rewards and punishments, shall on account of his religious sentiments be disqualified to hold any office or place of trust or profit under this commonwealth." *Art.* IX. *sect.* IV. *of Cons. of Pa.*

10. Are there any similar provisions in the federal constitution?

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." *Cons. of U. S. Amendments, Art.* I.

And, "No religions test shall ever be required as a qualification to any office or public trust, under the United States." *Cons. of U. S. Art.* VI. 3.

Freedom of elections.

11. What is the provision in the Declaration of rights as to the freedom of elections?

"Elections shall be free and equal. *Cons. of Pa. Art.* IX. *sect.* V.

As to trial by jury.

12. What is the provision in the State constitution as to the trial by jury?

"Trial by jury shall be as heretofore, and the right thereof remain inviolate." *Art.* IX. *sect.* VI.

"In all criminal prosecutions, by indictment or information, the accused hath a right, to a speedy public trial by an impartial jury of the vicinage." *Cons. of Pa. Art.* IX. *sect.* IX.

13. Are there similar provisions in the constitution of the United States?

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." *Cons. of U. S. Amendments, Art.* VI.

"In suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved." *Cons. of U. S. Amendments, Art.* VII.

Freedom of speech and of the press.

14. What is the provision of the State constitution as to the freedom of speech and of the press?

"The printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch of government: And no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty." *Cons. of Pa. Art.* IX. *sect.* VII.

15. What is the provision of the State constitution as to *prosecutions for libels*?

"In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence: And in all indictments for libels the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases." *Cons. of Pa. Art.* IX. *sect.* VII.

16. What is the provision of the constitution of the United States, on this subject?

"Congress shall make no law; abridging the freedom of speech or of the press." *Cons. of U. S. Amendments, Art.* I.

Security from searches and seizures.

17. What is the provision of the State constitution as to the security of the people from unreasonable searches, seizures and arrests?

"The people shall be secure in their persons, houses, papers and possessions, from all unreasonable searches and seizures: And no warrant to search any place, or to seize any person or things, shall

issue, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." *Art.* IX. *sect.* VIII.

18. What are the provisions of the federal constitution as to this matter?

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but on probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Cons. of U. S. Amendments, Art.* IV.

"No person shall be deprived of life, liberty or property, without due process of law." *Cons. of U. S. Amendments, Art.* V.

Right of the accused in criminal cases.

19. What is the provision of the State constitution as to the right of the accused in criminal cases?

"In all criminal prosecutions, the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favour, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land." *Art.* IX. *sect.* IX.

"No person shall for the same offence be twice put in jeopardy of life or limb." *Cons. of Pa. Art.* IX. *sect.* X.

There are similar provisions in the Constitution of the United States. *Cons. of U. S. Amendments, Art.* V. VI.

20. What is the provision of the State constitution as to proceeding against criminals by "information?"

"No person shall, for any indictable offence, be proceeded against criminally by information; except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; or by leave of the court, for oppression or misdemeanor in office." *Art.* IX. *sect.* X.

21. What is meant by "information" here?

It was a mode of accusation at common law, by information filed by the prosecuting officer, upon which the accused was brought to trial without the intervention of a grand jury.

Security of private property.

22. What are the provisions of the State constitution as to the security of private property?

"Nor shall any man's property be taken or applied to public use, without the consent of his representatives, nor without just compensation being made." *Cons. of Pa. Art.* IX. *sect.* X.

"The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken." *Cons. of Pa. Art.* VII. *sect.* IV.

"Nor shall any law impairing contracts be made." *Cons. of Pa. Art.* IX. *sect.* XVII.

This provision was necessary to enable the Legislature to apply private property for public use, on making compensation therefor. The Legislature cannot take the property of one individual, with or without compensation, in order to give it to another. A person cannot be deprived of his property, unless by the law of the land. c

23. What is the provision of the federal constitution on this subject?

"Nor shall private property be taken for public use, without just compensation." *Cons. of U. S. Amendments, Art.* V.

Courts, and administration of justice.

24. What is the provision of the State constitution as to the administration of justice?

All courts shall be open, and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases, as the Legislature may by law direct." *Cons. of Pa. Art.* IX. *sect.* XI.

Power of suspending laws.

25. What is the provision of the State constitution as to the power of suspending laws?

"No power of suspending laws shall be exercised, unless by the Legislature, or its authority." *Cons. of Pa. Art.* IX. *sect.* XII.

As to excessive fines and cruel punishments.

26. What is the provision of the State constitution as to excessive fines and cruel punishments?

"Excessive fines shall not be imposed, nor cruel punishments inflicted." *Cons. of Pa. Art.* IX. *sect.* XIII.

As to bailing prisoners.

27. What is the provision of the State constitution as to bailing prisoners?

"All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or presumption great." *Cons. of Pa. Art.* IX. *sect.* XIV.

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c Opinion of the Supreme Court of Pa., in Norman vs Hiest, 5 Watts and Sergeants' Reports, p. 171.

28. What is the provision of the State constitution as to requiring excessive bail?

"Excessive bail shall not be required." *Cons. of Pa. Art.* IX. *sect.* XIII.

29. Are there similar provisions in the Constitution of the United States?

Yes.

As to the writ of habeas corpus.

30. What is the provision of the State constitution as to the writ of *habeas corpus*?

"The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." *Cons. of Pa. Art.* IX. *sect.* XIV.

The same provision is contained in the Constitution of the United States. *Cons. of U. S. Art.* I. *sect.* IX. 2.

As to commissions of Oyer and Terminer.

31. What is the provision of the State constitution on the subject?

"No commission of Oyer and Terminer or Gaol Delivery shall be issued." *Cons. of Pa. Art.* IX. *sect.* XV.

32. What is meant by issuing commissions of Oyer and Terminer and Gaol Delivery, as mentioned in that provision of the constitution?

Issuing special commissions to persons other than the ordinary judges, on particular occasions, to hear, try and determine certain offences; as formerly practised in England.

Imprisonment of debtors.

33. What is the provision of the State constitution as to the imprisonment of debtors?

"The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law." *Cons. of Pa. Art.* IX. *sect.* XVI.

In Pennsylvania, arrest and imprisonment for debt on contract have been, for the most part, abolished by Acts of Assembly. It is provided in general, by Act of Assembly, that no person shall be arrested or imprisoned on civil process in any suit or proceeding for a debt or demand on contract express or implied; except where, in cases of such debt or demand, there has been fraud in contracting the debt or demand, or in concealing, removing or assigning the property of the debtor; and except in actions for money collected by a public officer, or for any misconduct or neglect in office, or in any professional employment, or on promises to marry; the Acts not to apply, also, to proceedings as for contempt, to enforce civil remedies. And, in all

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c As to the nature of the writ of Habeas Corpus, see First Part, chap. iv. p. 75.

cases, debtors may prevent their imprisonment or obtain their discharge therefrom, by complying with the terms of the Acts of Assembly for the relief of insolvent debtors.

Ex post facto laws.

34. What is the provision of the State constitution as to *ex post facto* laws?

"No *ex post facto* law *d* shall be made." *Art.* IX. *sect.* XVII.

There is a provision in the constitution of the United States prohibiting a State from passing such a law. *Cons. of U. S. Art.* I. *sect.* XI. 3.

As to laws impairing contracts.

35. What is the provision of the State constitution as to laws impairing contracts?

"No law impairing contracts *e* shall be made." *Art.* IX. *sect.* XVII.

36. What is the provision of the federal constitution on this subject?

"No State shall, pass any *ex post facto* law, or law impairing the obligation of contracts." *Cons. of U. S. Art.* I. *sect.* X. 1. See Part the First, chap. V.

Attainder of treason and felony.

37. What is the provision of the State constitution as to attainder for treason and felony?

"No person shall be attainted of treason or felony by the Legislature." *f* *Art.* IX. *sect.* XVIII.

38. What does the State constitution provide as to the effects of an attainder?

"No attainder shall work corruption of blood; nor, except during the life of the offender, forfeiture of estate to the Commonwealth; the estates of such persons as shall destroy their own lives, shall descend or vest as in the case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof." *Cons. of Pa. Art.* IX. *sect.* XIX.

39. What is meant by attainder and corruption of blood?

Formerly a conviction of treason or felony caused a forfeiture of the estate of the offender, and what was called in law an attainting or corrupting of his blood, so as to take away or prevent all right of inheritance or succession in his children or descendants.

40. Did a conviction of felony formerly cause a forfeiture of estate?

Yes. And persons slaying themselves, or committing *suicide*, were deemed in law felons, and their estates were forfeited; and the estates of persons killed by casualty were also thus forfeited.

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d See the explanation of the terms, and the construction of the provision, in Part the First, of this work, chap. iv. p. 76.

e See explanation, Part the First, chap. v. p. 79; and Part the Second, chap. iii.

f See Part the First, chap. iv. p. 75.

Right of petition.

41. What provision is there in the State constitution in regard to the right of petition?

"The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address or remonstrance." *Cons. of Pa. Art.* IX. *sect.* XX.

42. What is the provision as to the right of petition in the federal constitution?

"Congress shall make no law, abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances." *Cons. of U. S. Amendments, Art.* I.

Right to bear arms.

43. What is the provision in the State constitution as to the right to bear arms?

"The right of citizens to bear arms, in defence of themselves and the State, shall not be questioned." *Cons. of Pa. Art.* IX. *sect.* XXI.

The provision in the federal constitution on the subject is; "the right of the people to keep and bear arms shall not be infringed." *Cons. of U. S. Amendments, Art.* II.

As to a standing army.

44. What provision is there in the State constitution as to a standing army?

"No standing army shall, in time of peace, be kept up, without the consent of the Legislature." *Cons. of Pa. Art.* IX. *sect.* XXII.

The provision on the subject in the federal constitution is; "no State shall, keep troops or ships of war in time of peace." *Cons. of U. S. Art.* I. *sect.* X. 2.

As to the military power.

45. What is the provision of the State constitution as to the military being in subjection to the civil power?

"And the military shall, in all cases, and at all times, be in strict subordination to the civil power." *Cons. of Pa. Art.* IX. *sect.* XXII.

Quartering of soldiers.

46. What provision is there in the State constitution as to the quartering of soldiers in any private house?

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." *Cons. of Pa. Art.* IX. *sect.* XXIII.

There is a similar provision in the federal constitution. *Cons. of U. S. Amendments, Art.* III.

No titles of nobility.

47. What is the provision in the State constitution as to titles of nobility?

"The Legislature shall not grant any title of nobility or hereditary distinction." *Cons. of Pa. Art.* IX. *sect.* XXIV.

There is a provision in the constitution of the United States; "no title of nobility shall be granted by the United States." *Cons. of U. S. Art.* I. *sect.* IX. 7.

Tenure of offices.

48. What is the provision of the State constitution as to the tenure of offices?

"The Legislature shall not create any office the appointment of which shall be for a longer period than during good behaviour." *Cons. of Pa. Art.* IX. *sect.* XXIV.

49. What other provision is there in the State constitution as to the manner in which offices are to be held?

"All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehaviour in office or of any infamous crime." *Cons. of Pa. Art.* VI. *sect.* IX. *g*

As to emigration.

50. What is the provision in the State constitution as to emigration?

"Emigration from the State shall not be prohibited." *Cons. of Pa. Art.* IX. *sect.* XXV.

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g See, further on, chap. vii.

CHAPTER IV.

OF THE LEGISLATURE OF PENNSYLVANIA.

1. In whom is the legislative power of the Commonwealth vested? *a*

"The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives." *Cons. of Pa. Art.* I. *sect.* I.

2. Do the Senate and House of Representatives act seperately from, and independently of each other, in their deliberations and proceedings for the passing of laws?

Yes.

3. Is it necessary that a bill should be passed by both branches of the Legislature, in order to its becoming a law?

Yes.

SENATE.

4. Of whom is the Senate composed?

"The Senators shall be chosen for three years by the citizens of Philadelphia and the several counties, at the same time, in the same manner, and in the same places where they shall vote for Representatives." *Cons. of Pa. Art.* I. *sect.* V.

5. What is the provision of the constitution as to the number of the Senators?

"The number of Senators shall never be less than one fourth, nor greater than one third, of the number of Representatives." *Cons. of Pa. Art.* I. *sect.* VI.

6. How is the number of Senators to be fixed and apportioned among the several districts of the State?

The number of Senators is, at the several periods of making an enumeration of taxable inhabitants, within every term of seven years, to be fixed by the Legislature, and apportioned among districts formed by law, according to the number of taxable inhabitants in each district. *Cons. of Pa. Art.* I. *sect.* VI.

7. How are the Senatorial districts to be formed?

"The Senators shall be chosen in districts to be formed by the Legislature, but no district shall be formed so as to entitle it to elect

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a See Part the First, chap. iii.; Part the Second, chap. iii; and Part the Third, chap. i, p.

more than two Senators, unless the number of taxable inhabitants in any city or county shall, at any time, be such as to entitle it to elect more than two, but no city or county shall be entitled to elect more than four Senators; when a district shall be composed of two or more counties, they shall be adjoining; neither the city of Philadelphia nor any county shall be divided in forming a district." *Cons. of Pa. Art.* I. *sect.* VII.

8. Of what number does the Senate now consist?

Thirty-three.

9. What is the ratio at the present time, on which the Senators are appointed?

One Senator to every eleven thousand seven hundred and forty-six taxable inhabitants.

10. Who may be a Senator?

"No person shall be a Senator who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the State four years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this State; and no person elected as aforesaid shall hold said office after he shall have removed from such district." *Cons. of Pa. Art.* I. *sect.* VIII.

11. Is there one third of the number of Senators elected every year?

Yes. According to the constitution of the State, the Senators elected at the first election after the adoption of the constitution, were divided into three classes, the seats of which were to be vacated in one, two and three years respectively, so that thereafter one third of the whole number might be chosen every year.

Power as to appointments.

12. What is the power of the Senate as to appointments to office, under the constitution of the State?

The Governor "shall nominate, and by and with the advice and consent of the Senate, appoint all judicial officers of courts of record, unless otherwise provided for in this constitution." *Cons. of Pa. Art.* II. *sect.* VIII. *b*

13. May the same power be vested, by Act of Assembly, in the Senate, with regard to the appointment of other officers, whose election or appointment is not otherwise provided for in the constitution of the State?

Yes.

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b See further on chap. v.

14. How is the Senate to act on nominations to office made by the Governor?

"In acting on such nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor the votes shall be taken by yeas and nays." *Cons. of Pa. Art.* II. *sect.* VIII.

Impeachments.

15. What is the power of the Senate as to impeachments? *c*

"All impeachments shall be tried by the Senate: when sitting for that purpose the Senators shall be on oath or affirmation. No person shall be convicted without the concurrence of two thirds of the members present." *Cons. of Pa. Art.* IV. *sect.* II.

16. What officers are liable to impeachment?

"The Governor, and all other civil officers, under the Commonwealth, shall be liable to impeachment for any misdemeanor in office." *Cons. of Pa. Art.* IV. *sect.* III.

All State officers are liable to impeachment under this provision, except military officers. Members of the Legislature cannot be impeached.

17. What may the punishment be on convictions by impeachment?

"Judgment, in such case, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit, under this commonwealth; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law." *Cons. of Pa. Art.* IV. *sect.* III.

18. Who has the power to present impeachments, under the constitution?

"The House of Representatives shall have the sole power of impeaching." *Cons. of Pa. Art.* IV. *sect.* I.

HOUSE OF REPRESENTATIVES.

19. Of whom is the House of Representatives composed?

"The Representatives shall be chosen annually by the citizens of Philadelphia, and of each county respectively, on the second Tuesday of October." *Cons. of Pa. Art.* I. *sect.* II.

20. Who may be a Representative?

"No person shall be a Representative who shall not have attained the age of twenty-five years, and have been a citizen and inhabitant of the State three years next preceding his election, and the last three years thereof an inhabitant of the district in and for which he shall be chosen a Representative, unless he shall have been absent on the public business of the United States or of this State. *Cons. of Pa. Art.* I. *sect.* III.

c See Part the First, chap. iii, head "Senate," as to impeachments.

21. What is the provision of the constitution as to the number of members of the House of Representatives?

"The number shall never be less than sixty nor greater than one hundred." *Cons. of Pa. Art.* I. *sect.* IV.

22. How is the number of Representatives to be fixed and apportioned among the several counties of the State?

Within every term of seven years an enumeration of the taxable inhabitants of the State shall be made; and the number of Representatives shall be fixed by the Legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each. And each county shall have at least one Representative. *Cons. of Pa. Art.* I. *sect.* IV.

23. What is the provision of the constitution as to Representatives from counties newly erected?

"No county hereafter erected shall be entitled to a seperate representation, until a sufficient number of taxable inhabitants shall be contained within it to entitle them to one Representative, agreeably to the ratio which shall be then established." *Cons. of Pa. Art.* I. *sect.* IV.

24. What is the number of Representatives as fixed by law at the present time?

One hundred.

25. What is the ratio, at the present time, by which Representatives are apportioned?

One Representative to every three thousand eight hundred and seventy six taxable inhabitants.

26. Must all bills for raising revenue originate in the House of Representatives?

"All bills for raising revenue must originate in the House of Representatives, but the Senate may propose amendments as in other bills." *Cons. of Pa. Art.* I. *sect.* XXI.

27. Has the House of Representatives the sole power of preferring impeachments?

Yes.

OF THE DUTIES, POWERS AND PRIVILEGES OF THE LEGISLATURE.

The time of meeting of the Legislature.

28. When is the Legislature required to meet?

"The Legislature shall meet on the first Tuesday of January in every year, unless sooner convened by the governor." *Cons. of Pa. Art.* I. *sect.* X.

29. What power has the governor to convene the Legislature?

"He may, on extraordinary occasions, convene the General Assembly." *Cons. of Pa. Art.* II. *sect.* XII.

30. May the members of the Legislature be compelled to attend the meetings thereof?

"A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided." *Cons. of Pa. Art.* I. *sect.* XII.

Adjournment of the Legislature.

31. How may the Legislature adjourn?

By the joint order or resolution of both Houses thereof, at any time.

32. To what time may the Legislature adjourn?

To any time before the next general election thereafter.

33. What is the power of either House as to adjournment?

"Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." *Cons. of Pa. Art.* I. *sect.* XVII.

34. What power has the Governor to adjourn the Legislature?

"He may, in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months." *Cons. of Pa. Art.* II. *sect.* XII.

Privileges of members of the Legislature from arrest.

35. What is the privilege of members of the Legislature as to arrest?

"They shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same." *Cons. of Pa. Art.* I. *sect.* XVIII.

36. What privilege have members of the Legislature, at common law, in civil suits?

Members of the Legislature are privileged, by law, from arrest, summons, citation, or other civil process, during their attendance on the public business confided to them. It has been so decided by our courts of justice. 4 *Dallas' Reports, p.* 107.

Freedom of speech or debate.

37. What is the privilege of members of the Legislature as to speech or debate in either House thereof?

"For any speech or debate in either House, they shall not be questioned in any other place." *Cons. of Pa. Art.* I. *sect.* XVIII.

Incompatibility of offices.

38. Can a member of the Legislature hold, at the same time, any other civil office?

"No member of Congress or other person holding any office (except of attorney at law, and in the militia,) under the United States

or this Commonwealth, shall be a member of either House during his continaunce in Congress, or in office." *Cons. of Pa. Art.* I. *sect.* XIX.

39. What is the provision of the State constitution, as to members of the Legislature being appointed to offices which shall have been created, or the emoluments thereof increased, during the time for which they were elected?

"No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any office which shall have been created, or the emoluments of which shall have been increased, during such time." *Cons. of Pa. Art.* I. *sect.* XIX.

Compensation of the members thereof.

40. What is the provision of the State constitution as to the compensation of the members of the Legislature?

"The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the Commonwealth." *Cons. of Pa. Art.* I. *sect.* XVIII.

41. What is the compensation of the members of the Legislature at the present time?

Three dollars a day during their attendance at the sessions of the Legislature, and fifteen cents for every mile in going to and returning from the same.

The Speaker of each House receives one dollar additional for every day he attends upon his duty. By the Act of Assembly of April 7, 1843, the pay of the members of the Legislature, after any session of the Legislature shall continue over one hundred days, shall be one dollar and fifty cents per day for the number of days that the Legislature may continue in session beyond that time; and one dollar and fifty cents per day for all adjourned or extra sessions, unless such extra session shall be convened by the proclamation of the Governor; no member to receive pay for any day on which he shall fail or neglect to attend the sessions of the House of which he is a member, unless his attendance shall be prevented by sickness of himself or family, or by the performance of duties assigned him by said House.

SEPERATE POWERS AND DUTIES OF EACH HOUSE.

42. What are the powers, in general, of each House?

"Each House shall have all the powers necessary for a branch of the Legislature of a free State." *Cons. of Pa. Art.* I. *sect.* XIII.

As to the election and qualification of members.

43. How are the qualifications of members of the Legislature to be judged of?

"Each House shall judge of the qualifications of its members." *Cons. of Pa. Art.* I. *sect.* XII.

44. How are contested elections to be determined?

"Contested elections shall be determined by a committee to be selected, formed and regulated in such manner as shall be determined by law." *Cons. of Pa. Art.* I. *sect.* XII.

Vacancies.

45. How are vacancies in either House of the Legislature to be supplied?

"When vacancies happen in either House, the Speaker shall issue writs of election to fill such vacancies." *Cons. of Pa. Art.* I. *sect.* XX.

The person elected to fill the vacancy serves out the unexpired term of the person in whose place he was elected.

As to a quorum.

46. What number shall constitute a quorum of each House?

"A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members, in such manner and under such penalties as may be provided." *Cons. of Pa. Art.* I. *sect.* XII.

Election of officers.

47. How are the officers of each House to be elected?

"Each House shall choose its Speaker and other officers; and the Senate shall choose a Speaker *pro tempore*, when the Speaker shall exercise the office of Governor." *Cons. of Pa. Art.* I. *sect.* XI.

48. What are the usual officers of each House?

A speaker, as presiding officer, a secretary or clerk, a sergeant-at-arms, and doorkeeper, with their deputies or assistants.

Rules of proceeding.

49. How are rules of proceeding in each House to be determined?

"Each House may determine the rules of its proceedings." *Cons. of Pa.* I. *Art. sect.* XIII.

Power to punish its members.

50. What power has each House to punish its members?

Each House may, "punish its members for disorderly behaviour." *Cons. of Pa. Art.* I. *sect.* XIII.

Expulsion of members.

51. What is the provision of the State constitution as to expelling members?

"Each House may, with the concurrence of two-thirds, expel a member, but not a second time for the same cause." *Cons. of Pa. Art.* I. *sect.* XIII.

Members of the Legislature cannot be removed by impeachment. *d* They may be punished by indictment for bribery, corruption or other misdemeanor.

d See Part the Third, chap. iv. p. 206.

Doors of each House to be open.

52. What is the provision of the State constitution as to the doors of each House being open?

"The doors of each House, and of committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret." *Cons. of Pa. Art.* I. *sect.* XVI.

Journal.

53. What is the duty of each House as to keeping a journal of its proceedings?

"Each House shall keep a journal of its proceedings, and publish them weekly, except such part as may require secresy." *Cons. of Pa. Art.* I. *sect.* XV.

Yeas and nays.

54. What is the provision of the State constitution as to the yeas and nays in each House?

"The yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals." *Cons. of Pa. Art.* I. *sect.* XV.

Contempt of either House.

55. Has each House power to punish for contempt?

Each House has the power, expressly given by the State constitution, to punish its own members for misbehaviour or contempt; and there is an implied power in each House to commit and imprison other persons for contempt, as necessary for the performance of its duties. The imprisonment can continue no longer than the power that imprisons; and must terminate with the adjournment of the Legislature. *e*

Power as to proceedings of the Governor.

56. What power has either branch of the Legislature as to the official acts and proceedings of the Governor?

"The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature." *Cons. of Pa. Art.* II. *sect.* XV.

Adjournment.

57. May each House adjourn without the consent of the other?

"Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." *Cons. of Pa. Art.* I. *sect.* XVII.

e See Part the First, chap. iii. p. 48.

OF THE GENERAL DUTIES AND POWERS OF THE LEGISLATURE.

58. How are the duties and powers of the Legislature, in general, defined?

By the constitution of the State.

59. Are the powers of the Legislature limited?

The powers of the Legislature are limited by the Constitution of the State, and the constitution of the United States; and no law can be passed by the Legislature contrary to the provisions in either constitution. *f*

60. How are the powers of the Legislature limited by the constitution of the United States?

By the express prohibitions in it of powers to the States severally, and to the Legislatures thereof; and by the grant of powers exclusively to Congress or the general government. *f*

61. What are the powers, in general, of the Legislature as conferred by the constitution of the State?

Those conferred by having "vested in it the legislative power of the Commonwealth," and by the specific powers expressly mentioned. *g*

62. What powers does the Legislature possess by there being "vested in it the legislative power of the Commonwealth?"

All the general and necessary powers of the legislature of a free government; not prohibited to it by the constitution of the United States or of this State, nor contrary to any of the provisions thereof.

63. What are the powers prohibited to the Legislature by the Constitution of the State?

Those specific powers expressly forbidden to it, and those which are contrary to the Declaration of Rights, or any other provision of the Constitution.

Divorces by the Legislature.

64. What is the provision of the State constitution as to the Legislature granting divorces from marriage?

"The Legislature shall not have power to enact laws annulling the contract of marriage in any case where, by law, the courts of this Commonwealth are or hereafter may be empowered to decree a divorce." *Cons. of Pa. Art.* I. *sect.* XIV.

65. Is there any provision by law for granting divorces, in this State?

By Act of Assembly, divorces may be decreed, by the Courts of Common Pleas, for certain causes.

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f See Part the First, chap. i, and Part the Second, chap. i. iv.

g As to the *incidental* and *implied* powers of the Legislature, see Part i. chap. iii. p. 49. 50; and Part ii. chap. iv. p. 138. 139.

As to revenue.

66. What is the provision of the constitution as to bills for raising revenue?

"All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills." *Cons. of Pa. Art* I. *sect.* XXI.

Treasury, and State Treasurer.

67. What is the provision of the Constitution as to drawing money from the State Treasury?

"No money shall be drawn from the treasury but in consequence of appropriations made by law." *Cons. of Pa. Art.* I. *sect.* XXII.

68. What is the provision of the constitution as to a State Treasurer?

"A State Treasurer shall be elected annually, by joint vote of both Houses." *Cons. of Pa. Art.* VI. *sect.* VI.

Corporations; Banks.

69. What is the provision of the State constitution as to corporations and banks?

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months previous public notice of the intended application for the same, in such manner as shall be prescribed by law. Nor shall any charter for the purposes aforesaid, be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same, whenever in the opinion of the Legislature it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation." *Cons. of Pa. Art.* I. *sect.* XXV.

Taking private property for public use.

70. What is the provision of the constitution as to taking private property for public use?

"The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use, without requiring such corporation or individual to make compensation to the owners of said property, or give adequate security therefor, before such property shall be taken." *Cons. of Pa. Art.* VII. *sect.* IV.

Militia.

71. What is the provision of the State constitution as to the militia?

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." *Cons. of Pa. Art.* VI. *sect.* II.

Schools.

72. What duty is imposed by the State constitution on the Legislature, in regard to schools?

"The Legislature shall, as soon as conveniently may be, provide for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." *Cons. of Pa. Art.* VII. *sect.* I.

73. Is there a system of common schools, by law, in Pennsylvania?

There is established, by law, a common school system, with a State fund; and common schools, wherein the children of all persons are admitted, are supported throughout the State, jointly by annual appropriations out of the State fund and by a school tax levied and collected in each district. See on this subject the title Common School System, Part the Third, chap. X.

74. Is there any particular provision by law for teaching the poor gratis?

By Act of Assembly it is provided, that in any district where the common school system has not been adopted by the citizens there shall be a tax levied and collected by the school directors for teaching the poor gratis. See the title Common School System, further on, chapt. X.

Seminaries.

75. What is the provision of the State constitution as to seminaries of learning?

"The arts and sciences shall be promoted in one or more seminaries of learning." *Cons. of Pa. Art.* VII. *sect.* II.

It has been the policy of the Legislature, from the earliest period, to assist such institutions of learning, by appropriations of money in aid of their funds. See chap. X.

Of amendments to the Constitution.

76. What provision is there in the State constitution as to the mode of making amendments to it?

"Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next election, in at least one newspaper in every county in which a newspaper shall be published; and if in the Legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in manner aforesaid, and such proposed amendment or amendments shall be submitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the

people shall approve and ratify such amendment or amendments by a majority of the qualified voters of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately and distinctly." *Cons. of Pa. Art.* X. *h*

Of the mode of enacting laws.

77. How may laws originate or be proposed in the Legislature?

All laws may originate in either House; except, that "bills for raising revenue must originate in the House of Representatives."

78. What is a *bill*, in the Legislature?

A project of a law, offered by a member or committee of either House, according to the rules thereof.

89. What is the mode of proceeding in enacting a law by the Legislature?

All laws must be first passed by one House, and then by the other, according to the rules of each House. *i*

80. What number of the members of each House must agree to a bill or resolution before its passage?

A majority of the members present, a quorum attending; except in cases where the assent of a greater number is expressly required by the State constitution.

81. How is a law finally enacted?

"Every bill which shall have passed both Houses, shall be presented to the Governor. If he approve he shall sign it, but if he shall not approve it he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their journal and proceed to re-consider it. If, after such re-consideration, two thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall be likewise re-considered, and if approved of by two-thirds of that House, it shall become a law. But in such cases the votes of both Houses shall be determined by yeas and nays, and the names of persons voting for or against the bill shall be entered on the journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting." *Cons. of Pa. Art.* I. *sect.* XXIII.

h See Part the Third, chap. iii. p. 96.
i See Part the First, chap. iii. p. 71.

82. Must every joint resolution or order of the two Houses of the Legislature be presented to the Governor for his approval or disapproval?

"Every order, resolution or vote, to which the concurrence of both Houses may be necessary (except on questions of adjournment) shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved shall be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill." *Cons. of Pa. Art.* I. *sect.* XXIV.

The Governor has not the right of a negative upon elections by the Legislature, as he has, in a qualified manner, upon bills passed by it.

Of the laws passed by the Legislature.

83. What are the laws of the Commonwealth passed by the Legislature called?

The Acts of the General Assembly of the State.

84. What is a statute?

A statute is a written law, passed by the Legislature, and duly enacted. The Acts of the General Assembly of the State are its statutes. *j*

85. When is a law to be considered as having been passed and enacted?

When it was approved by the Governor, or became a law, as prescribed by the State constitution, without his approval.

86. What is the date of a law?

The day of its being approved by the Governor, or becoming a law.

87. From what time does a law begin to take effect?

From the date of its passage, or becoming a law, unless it is otherwise provided in its terms.

88. Does the latest statute repeal all former statutes so far as their provisions are contrary to or inconsistent with it?

Yes.

89. May a law which has been passed by the Legislature, and gone through all the forms of a law, be declared unconstitutional and void?

Yes. Any Act of Assembly, which is contrary to the provisions of the federal or State constitution, is void, and it may be so decided by the courts of justice of the State, or of the United States, exercising their jurisdictions respectively in the administration of the law.

90. Where are the original laws, as passed by the Legislature, filed and recorded?

In the office of the Secretary of the Commonwealth.

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j See Part the Third, chap. ii.

91. How are the Acts of Assembly published?

By law, there are printed every year the Acts of Assembly of the same year, under the direction of the Secretary of the Commonwealth, for distribution to certain State and county officers; and it is required, also, that they shall be published in a certain number of newspapers in every county.

CHAPTER V.

GOVERNOR OF PENNSYLVANIA.

1. In whom is the executive power vested, in this State?

By the constitution, "the Supreme executive power is vested in a Governor." *Cons. of Pa. Art.* II. *sect.* I. He is called the Executive, or Chief Magistrate, of the State.

2. How is the Governor to be chosen?

He is to be elected by the people. "The governor shall be chosen on the second Tuesday of October, by the citizens of the Commonwealth. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both houses of the Legislature. The person having the highest number of votes shall be governor. But if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint votes of the members of both houses." *Cons. of Pa. Art.* II. *sect.* II.

"Contested elections (for governor) shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law." *Cons. of Pa. Art.* II. *sect.* II. See title Elections, chap. VIII, further on, in this work.

Term of office.

3. How long does the Governor hold his office?

Three years from the third Tuesday of January next ensuing his election. *Cons. of Pa. Art.* II. *sect.* III.

Re-election.

4. How often may the Governor be re-elected?

"He shall not be capable of holding it longer than six in any term of nine years." *Cons. of Pa. Art.* II. *sect.* III.

Qualifications for Governor.

5. What are the qualifications for governor?

"He shall be at least thirty years of age, and have been a citizen and an inhabitant of this State seven years before his election, unless he shall have been absent on the public business of the United States or of this State." *Cons. of Pa. Art.* II. *sect.* IV.

6. Who may not be governor?

"No member of Congress or person holding any office under the United States or this State shall exercise the office of Governor." *Cons. of Pa. Art.* II. *sect.* V.

Oath.

7. What is the oath of office of the governor of this State?

He "shall be bound by oath or affirmation to support the constitution of this Commonwealth and to perform the duties of his office with fidelity." *Cons. of Pa. Art.* VIII. He shall also, "be bound, by oath or affirmation to support" the constitution of the United States. *Cons. of U. S. Art.* VI. 3.

Salary.

8. What is the provision of the Constitution as to the compensation of the Governor?

"The Governor shall at stated times receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall be elected." *Cons. of Pa. Art.* II. *sect.* VI.

9. What is the Governor's salary at the present time, 1845?

Three thousand dollars, a year.

Military power.

10. What is the military power of the Governor?

He is commander-in-chief of the army and navy of this Commonwealth, and of the militia, except when they shall be called into the actual service of the United States. *Cons. of Pa. Art.* II. *sect.* VII.

11. What power has the Governor to call the militia into actual service?

The militia of this commonwealth may be called into actual service by the governor thereof, in case of a rebellion or of an actual or threatened invasion of this or any neighboring State; but no part thereof shall be detained in service, at any one time, longer than three months, under the mere requisition of the governor without the direction or assent of the President of the United States. Act of Assembly, of April 22, 1822, entitled "An Act for the regulation of the militia of this Commonwealth."

Power of appointment.

12. What is the provision of the Constitution as to the Governor appointing a Secretary of the Commonwealth?

"He shall appoint a Secretary of the Commonwealth during pleasure." *Cons. of Pa. Art.* II. *sect.* VIII. See head "Secretary of the Commonwealth," further on, chap. VII.

13. What is the power of the governor, by the State constitution, as to appointing judges of the courts?

"He shall nominate, and by and with the consent of the Senate, appoint all judicial officers of courts of record, unless otherwise provided for in this constitution. He shall have power to fill all vacancies that may happen in such judicial offices during the recess of the Senate, by granting commissions which shall expire at the end of the next session." *Cons. of Pa. Art.* II. *sect.* VIII.

14. Has the Governor power, by the State constitution, to make appointments to fill vacancies in the offices of Sheriff, Coroner, Prothonotary, Clerk of Court, Recorder and Register?

Yes; such appointments to continue until the next general election, and until successors shall be duly qualified and elected. *Cons. of Pa. Art.* VI. *sect.* I. III.

15. May the Governor be authorized by Act of Assembly to appoint all officers whose appointment is not otherwise provided for in the constitution?

Yes.

The Governor's power of appointment is conferred either by the State constitution or by Act of Assembly; and it is to be exercised either by him alone, or by and with the consent of the Senate, as directed by the constitution or by law. An appointment made by him may, also, be either to continue at his pleasure, or for a term of years, as prescribed by the constitution or by Act of Assembly.

He may, by the constitution, appoint the Secretary of the Commonwealth, and persons to supply vacancies, as above mentioned, in the offices of sheriff, coroner, prothonotary, clerk of court, register and recorder; and with the consent of the Senate judges of the several courts. And he is authorized by Act of Assembly, to appoint the Attorney General, Auditor General, Surveyor General, Adjutant General, Notaries Public, officers under the inspection laws, and some other officers. See, further on, chap. VII.

By the constitution; "All officers whose election or appointment is not provided for in this constitution, shall be elected or appointed as shall be directed by law." *Cons. of Pa. Art.* VI. *sect.* VIII. The XIth sect. of the Schedule to the constitution, providing that "such laws shall be enacted at the first session of the Legislature under the amended constitution," is but directory; and the Legislature may pass such laws, at any time. A law, passed in 1843, providing for the election of Canal Commissioners by the

people, was decided by the Supreme Court of the State, to be constitutional.

16. Does the power of appointment imply the power to remove an officer, in order to fill the vacancy?

Yes; except in a case where the office is to be held for a certain time, under the law establishing it. *a*

Power of pardon and reprieve.

17. What is the provision of the constitution as to the power of the Governor to grant pardons and reprieves?

"He shall have power to remit fines and forfeitures and to grant reprieves and pardons, except in cases of impeachment." *Cons. of Pa. Art.* II. *sect.* IX.

18. What is a reprieve?

The temporary suspension of the sentence of death on a criminal.

19. Can the Governor grant a pardon for an offence before the trial and conviction of the offender?

Yes.

Duty as to the Legislature. b

20. What is the duty of the Governor as to giving information to the Legislature?

"He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend such measures as he shall judge expedient." *Cons. of Pa. Art.* II. *sect.* XI.

This is done by communications in writing to the Legislature, called his messages. His annual message is usually transmitted to the Legislature at the beginning of every session.

Register of his acts and proceedings.

21. Where is there a register of his acts and proceedings to be kept?

In the office of the Secretary of the Commonwealth, as required by the constitution. *Cons. of Pa. Art.* II. *sect.* XV.

Power of the Legislature as to his proceedings.

22. What power has the Legislature, by the State constitution, as to the official acts and proceedings of the Governor?

"The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either branch of the Legislature." *Cons. of Pa. Art.* II. *sect.* XV.

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a See Part the First, chap. viii. p. 94; and Part the Second, chap. v. p. 144.

b See head Legislature, Part iii. chap. iv.

Power as to the Legislature.

23. What power has the Governor as to convening the Legislature?

"He may on extraordinary occasions, convene the Legislature." *Cons. of Pa. Art.* II. *sect.* XII.

24. What is his power as to adjourning the Legislature?

"He may in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months." *Cons. of Pa. Art.* II. *sect.* XII.

He cannot adjourn them to meet again beyond the time of the next general election.

Power as to bills of the Legislature.

25. What is his power as to the enactment of laws?

This power is described under the title "Legislature," in this work. See above, Part the Third, chap. IV.

Duty in general.

26. What is the duty of the Governor as to executing the laws?

"He shall take care that the laws be faithfully executed." *Cons. of Pa. Art.* II. *sect.* XIII.

This clause is not to be considered as, by itself, conferring any specific powers, not otherwise possessed by the Governor. It is rather to be regarded as a comprehensive description of the duty of the executive, to watch with vigilance over the interests of the Commonwealth. The provisions of the constitution in relation to the Governor contain, for the most part, only general principles, indicating the part belonging to the executive department in the system of the State government, and to be carried out as directed by Act of Assembly. The particular duties and powers of the Governor, in accordance with the constitution, are prescribed by Act of Assembly. The same rules apply in regard to the construction of the constitutional powers of the executive department as to the other departments of the government.

Impeachment.

27. Is the Governor liable to impeachment for misdemeanor in office?

"The Governor, and all other civil officers under this Commonwealth, shall be liable to impeachment for any misdemeanor in office." *Cons. of Pa. Art.* IV. *sect.* III. *c*

c See, as to impeachment, Part the Third, chap. iv. p. 206.

Vacancy in the office of Governor.

28. How are vacancies in the office of Governor to be supplied?

"In case of the death or resignation of the Governor, or of his removal from office, the Speaker of the Senate shall exercise the office of Governor, until another Governor shall be duly qualified; but in such case, another Governor shall be chosen at the next annual election of Representatives, unless such death, resignation or removal, shall occur within three calender months immediately preceding such next annual election, in which case a Governor shall be chosen at the second succeeding annual election of Representatives. And if the trial of a contested election shall continue longer than until the third Monday of January next, ensuing the election of Governor, the Governor of the last year or the Speaker of the Senate who may be in the exercise of the executive authority, shall continue therein until the determination of such contested election, and until a Governor shall be duly qualified as aforesaid." *Cons. of Pa. Art.* II. *sect.* XIV.

Heads of Departments.

29. What officers are called Heads of Departments of the State Government?

The Secretary of the Commonwealth, Auditor General, State Treasurer, Surveyor General, and Attorney General. *d*

30. May the Governor require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices?

Yes. *Cons. of Pa. Art.* II. *sect.* X.

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d See Part the Third, chap. vii.

CHAPTER VI.

OF THE JUDICIARY OF PENNSYLVANIA.

1. What is the provision in the State constitution as to the judicial power of the State? *a*

"The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of Oyer and Terminer and General Gaol Delivery, in a Court of Common Pleas, Orphans Court, Register's Court, and a Court of Quarter Sessions of the Peace, for each county; in Justices of the Peace; and in such other courts as the Legislature may, from time to time establish." *Cons. of Pa. Art.* V. *sect.* I.

Judges.

2. How are the judges of the courts to be appointed?

"The judges of the Supreme Court, of the several courts of Common Pleas, and of such other courts of record as are or may be established by law, shall be nominated by the Governor, and by and with the consent of the Senate appointed by him." *Cons. of Pa. Art.* V. *sect.* II., *and Art.* II. *sect.* VIII.

The Governor "shall have power to fill all vacancies that may happen in such judicial offices during the recess of the Senate, by granting commissions which shall expire at the end of their next session." *Cons. of Pa. Art.* II. *sect.* VIII.

Duration of office.

3. How long do the judges of the courts hold their offices?

"The judges of the Supreme Court shall hold their offices for the term of fifteen years, if they so long behave themselves well; the president judges of the courts of record, and all other judges required to be learned in the law, for ten years; and the associate judges of the Courts of Common Pleas for five years." *Cons. of Pa. Art.* V. *sect.* II.

Tenure of office.

4. What is the tenure of the offices of the judges of courts?

They hold their offices for the terms prescribed, "if they so long behave themselves well." This is the tenure by good behaviour.

5. How may the judges of the courts be removed from office?

By impeachment, for misdemeanor in office; and "for any reasonable cause which shall not be sufficient ground of impeachment, the Governor may remove any of them on the address of two thirds of each branch of the Legislature." *Cons. of Pa. Art.* V. *sect.* II.

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a See Part the First, chap. ix.; and Part the Second, chap. vi.

Salaries.

6. What is the provision in the State constitution as to the compensation of the judges?

"The judges of the Supreme Court and the presidents of the several Courts of Common Pleas, shall at stated times receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth." *Cons. of Pa. Art.* V. *sect.* II.

7. What are the salaries of the judges of courts at present?

The salary of the Chief Justice of the State, who is the President of the Supreme Court, is three thousand and sixty-six dollars and sixty-six cents a year, and of the Associate Judges of that Court each twenty four hundred dollars a year, and each of those judges to receive four dollars for every day whilst on the circuit. The salary of each of the judges of the District Court for the city and county of Philadelphia is two thousand dollars a year; of the judge of the District Court for the city and county of Lancaster two thousand dollars a year; and of each of the Judges of the District Court for the county of Allegheny two thousand five hundred dollars a year. The salary of each of the judges of the Court of Common Pleas for the district of the county of Philadelphia is twenty six hundred dollars a year, and of the President Judges of the other districts two thousand dollars a year; and the salary of each of the Associate Judges of the Courts of Common Pleas therein one hundred and forty dollars a year; the judges of the Courts of Common Pleas to receive, also, fifteen cents for every mile by them necessarily travelled in the performance of their duties.

The salaries of the judges were thus fixed by law before the 14th day of January 1843. By an Act of Assembly of that date, the salaries of each of the judges of the Supreme Court were reduced four hundred dollars a year; of each of the judges of the courts in the city of Philadelphia six hundred dollars per year; of each of the judges learned in the law, of the county of Allegheny five hundred dollars a year; and of each of the President Judges of the other courts in the State four hundred dollars a year. And by an Act of Assembly of the 17th of April 1843, it is provided that the salary of the Chief Justice of the State shall be eighteen hundred dollars a year, and of each of the Associate Judges of the Supreme Court sixteen hundred dollars a year; and that the judges of that court shall be entitled to receive, in addition to their respective salaries, three dollars per day whilst on the circuit, and necessarily employed in holding courts, or in travelling to and from the same, to their places of residence, as a full allowance for travelling expenses; this provision to extend only to those officers who shall be thereafter appointed. By the last mentioned Act the salary of each Associate Judge of the Courts of Common Pleas, not learned in the law, was fixed at one hundred and twenty dollars a year. As most of the judges were

appointed before the 14th of January 1843, whose salaries cannot, under the constitution, be diminished during their continuance in office, the salaries of the present Judges are determined, as to amount, according to those Acts of Assembly, by the dates of their commissions respectively.

8. How are the salaries of the judges of the courts paid?

By the State, as provided by law.

Incompatibility of offices.

9. Can the Judges of the Courts hold any other offices?

"The judges of the Supreme Court, and the presidents of the several Courts of Common Pleas, shall not hold any other office of profit under this Commonwealth." *Cons. of Pa. Art.* V. *sect.* II.

Courts.

10. What courts are there, established by law, in this State?

The Supreme Court of Pennsylvania; the Courts of Common Pleas, Courts of Oyer and Terminer and General Gaol Delivery, Courts of Quarter Sessions of the Peace, in the several counties; and District Courts in the cities and some of the counties.

11. What is the provision in the State constitution as to courts of law, and the administration of justice?

"All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial or delay." *Cons. of Pa. Art.* IX. *sect.* XI. See, also, on the Declaration of Rights, chap. III. Part III.

Of the Supreme Court of Pennsylvania.

12. How is the Supreme Court formed?

The Supreme Court consists of five judges, a Chief Justice and four Associate Judges; the name and style whereof is the "Supreme Court of Pennsylvania."

13. What is the jurisdiction of the Supreme Court?

Its jurisdiction extends over the whole State, and is principally appellate. The judgments, decrees and sentences of any of the other courts of record in the State, in civil and criminal cases, may be removed into it, by writ of error or appeal, as provided by law, for revision and correction. It has original jurisdiction in issuing writs of *Mandamus*, *Habeas Corpus*, *Quo Warranto*, and other remedial writs, and in various proceedings in law, by Acts of Assembly. It has original jurisdiction, also, within the city and county of Philadelphia, in all civil suits, where the matter in controversy is of the value of five hundred dollars or more. The judges thereof have power, likewise, to hold a Court of Oyer and Terminer, with original jurisdiction, in any county; though this power is very seldom exercised.

14. How are the sessions of the Supreme Court held, and its business transacted?

For the purpose of holding sessions of the Supreme Court, and transacting its business, the Commonwealth is divided into four districts, the Eastern, the Western, the Northern, and the Middle; the courts for which are held, respectively, in Philadelphia, Pittsburg, Sunbury, and Harrisburg.

15. Is there a prothonotary for each District of the Supreme Court?

There is a prothonotary for each District, having his office at the place of holding the Court therein; who is appointed by the Supreme Court for the term of three years, under the constitution. *Cons. of Pa. Art.* VI. *sect.* III. His compensation is derived from fees of office, fixed by law.

16. What is the difference between appeals and writs of error?

In general, on appeals the cases are tried and determined by the Supreme Court on the facts; and on a writ of error the judgment of the inferior court is reviewed only on matter of law.

17. How does the Supreme Court exercise its original jurisdiction, in civil suits, in the city of Philadelphia?

In Courts of *Nisi Prius*, which may be held by a single judge of the Supreme Court; and from which an appeal lies to the Supreme Court in bank, or before all or a majority of the judges thereof.

18. Is the decision of the Supreme Court, in every case, final?

Yes; it is the court of the last resort; and its decisions are final and conclusive in all cases, except where there is an appeal from it to the Supreme Court of the United States, under the federal constitution. *b*

Of the Courts of Common Pleas.

19. What are the Courts of Common Pleas?

Courts of record, in each county, with general jurisdiction in civil suits and cases at law, within their respective counties.

20. How are these courts formed?

Each Court of Common Pleas consists of a President Judge of the judicial district to which the county belongs, and two Associate Judges, "not learned in the law," for the county.

21. What are judicial districts?

For the purpose of holding the several courts for each county, the State is divided into judicial districts, consisting each of not more than five counties, for each of which districts there is appointed a President Judge, learned in the law, of the several courts in the district. *Cons. of Pa. Art.* V. *sect.* III.

There are twenty-one such districts in the State.

22. How many of the judges of the Court of Common Pleas are necessary to hold the court?

Any two of the judges, or the President alone, may hold the court for the transaction of business.

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b As to an appeal to the Supreme Court of the United States from the State courts, see Part the First, chap. ix., head "Supreme Court of U. S."

23. How often are the Courts of Common Pleas held in each county?

They are held four times a year, in regular terms, and the judges have power to adjourn, and to appoint adjourned courts, from time to time, as occasion may require.

Of Courts of Oyer and Terminer.

24. What are the Courts of Oyer and Terminer?

They are courts of record, of exclusively criminal jurisdiction, in the several counties respectively; composed of the judges of the Court of Common Pleas, of whom any two, the President being one, may hold the court. They are also Courts of General Gaol Delivery. They are held as often as ordered by the judges thereof. They have jurisdiction of crimes and offences generally, and exclusively of crimes capital, or which were formerly capital.

25. What are capital crimes?

Crimes punishable with death.

26. Can the Supreme Court hold a Court of Oyer and Terminer in any county?

Yes; but it is seldom done, except in the city of Philadelphia.

Courts of Quarter Sessions of the Peace.

27. What are the Courts of Quarter Sessions of the Peace?

They are courts of record in the several counties, of criminal jurisdiction, having cognizance, concurrently with the Court of Oyer and Terminer and General Gaol Delivery, of all crimes and misdemeanors, except such crimes as now are, or formerly were, capital felonies.

28. Is there a great variety of special powers, not belonging to their proper jurisdiction, conferred by particular Acts of Assembly on the Courts of Quarter Sessions of the Peace?

Yes; as laying out roads, dividing townships, cases of apprentices, granting tavern licenses, and like matters.

Register's Courts.

29. What are Register's Courts?

Courts in each county, composed of the Register of Wills and the Judges of the Court of Common Pleas, or any two of them, for the purpose of deciding questions as to the validity of wills, the right of administration on the estates of deceased intestates, and all other matters coming before the Register. *c*

30. How are disputes about matters of fact before the Register's Court to be decided?

By the Court of Common Pleas of the proper county, on issues sent to that court.

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c See head "Register," further on, chap. vii.

31. Can appeals be taken from the Register's Court?

Any person aggrieved by a final sentence or decree of that court may appeal therefrom to the Supreme Court.

Orphans Court.

32. What is the Orphans Court?

It is a court of record held in every county; composed of the Judges of the Court of Common Pleas, any two of whom may be a quorum, but the Associate Judges cannot act without the President in cases in which his presence is requested by any party interested.

33. What is the jurisdiction of the Orphans Court?

Its jurisdiction relates, in general, to guardians, executors, and administrators, and the settlement of their accounts; to the distribution of the assets of decedents among their creditors, or of their estates among their heirs, representatives or legatees; and to the care of the persons and estates of minors.

District Courts.

34. What are the District Courts?

They are courts, composed severally of one or more judges, learned in the law, established by law in the city and county of Philadelphia, and in some other counties, for a limited time; having civil jurisdiction in cases when the matter in controversy exceeds a certain amount in value.

35. What District Courts are there now?

The District Court of the city and county of Philadelphia, the District Court for the city and county of Lancaster, the District Court for the county of Allegheny, the District Court for the county of Lancaster, the District Court for the counties of Erie, Crawford, Venango and Warren.

36. What subordinate officers of the courts of the State are there?

Prothonotaries of the Supreme Court, in the several districts thereof, and of the several Courts of Common Pleas, clerks of the other courts, attorneys at law, sheriffs, constables and tipstaves.

Prothonotaries and Clerks.

37. How are the prothonotaries and clerks of the several courts appointed?

The prothonotaries of the several districts of the Supreme Court are appointed by the judges thereof, for three years; the other prothonotaries and clerks of courts are elected by the electors of each county every three years. *d* *Cons. of Pa. Art.* VI. *sect.* III.

38. What compensation do they receive for their services?

They receive fees for services performed, as prescribed by law.

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d See head "Prothonotaries," and "Clerk of Court," further on, chap. vii.

Sheriffs.

39. Is the sheriff of a county an officer of the several courts therein?

Yes; and it is his duty to execute all writs, orders, judgments, decrees and sentences of the courts.

40. How are sheriffs appointed?

A sheriff is elected in every county, by the qualified citizens thereof, every three years, and commissioned by the Governor. e

Attornies at Law.

41. What are attornies at law?

They are persons learned in the law, admitted by the courts to manage causes, and to transact business therein, as the attornies or agents of others.

42. Are they officers of the courts?

Yes.

43. Do they take on oath of office?

Each attorney is bound by oath, "that he will support the Constitution of the United States and the constitution of this Commonwealth, and that he will behave himself in the office of attorney of the court, according to the best of his learning and ability, and with all good fidelity, as well to the court as to the client; that he will use no falsehood, nor delay any person's cause for lucre or malice."

44. May attornies at law be punished by the courts for misbehavior in office?

The courts may punish them, in a summary manner, for misbehaviour in office, by striking their names from the roll of attornies at law, by suspending them for a time from the practice of their profession, or by fine or imprisonment.

Attorney General of the Commonwealth.

45. How is the Attorney General of the Commonwealth appointed?

By the Governor.

46. What is the nature of his duties?

He is the legal adviser of the Government of the State on questions of law, and is its attorney at law in the courts of justice; he has, especially, the management of all prosecutions and indictments for crimes and misdemeanors. All indictments are presented in his name, and signed by him or in his name. He also, generally, acts as attorney at law for the Commonwealth, as such, in all civil suits in which it is interested.

47. How are persons prosecuted for criminal offences?

All criminal offences are considered as "against the peace and dignity of the Commonwealth," and persons guilty thereof are prosecuted in the name and behalf of the Commonwealth.

e See head "Sheriff," further on, chap. vii.

48. How are prosecutions and indictments for criminal offences conducted, on the part of the Commonwealth, before the several courts of justice throughout the State?

By the Attorney General, and his deputies.

49. What power has the Attorney General as to the appointment of deputies?

He can appoint deputies, and remove them from office, at his discretion. He has, generally, a Deputy in each county, called the prosecuting attorney.

50. What compensation does the Attorney General receive?

He has a fixed salary, per annum, paid by the State; and he, and his Deputies, receive perquisites and fees prescribed by law, generally in the costs on prosecutions or indictments. *d*

Of jurors.

51. What are the provisions of the constitution of the United States as to the trial by jury?

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be as heretofore." *Amendments to Cons. of U. S. Art.* VII. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." *Amendments to Cons. of U. S. Art.* VI.

52. What is the provision of the constitution of the State as to the trial by jury?

"Trial by jury shall be as heretofore, and the right thereof remain inviolate." *Cons. of Pa. Art.* IX. *sect.* VI. "In all criminal prosecutions, the accused hath a right, in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the vicinage; he cannot be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land." *Cons. of Pa. Art.* IX. *sect.* IX. *e*

53. How are the jurors for the several courts in each county selected?

The Commissioners and Sheriff of the county are required to select from the lists of the taxables of the county, previously returned by the Assessors of the several townships, the names of a sufficient number of sober, intelligent and judicious citizens to serve as jurors for the courts of the county to be held during the following year; these names are placed in a wheel; and before the time of holding every court, the county commissioners and sheriff on the order of the judges of the court, are to draw by lot from the wheel the names of the number of jurors directed for that court, who are to be summoned by the Sheriff to attend the court, and from the names of

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c See Part the First, chap. vii.

d See head "Attorney General," further on, chap. vii.

whom twelve persons are to be drawn by lot by the Prothonotary or Clerk of the court for the trial of each cause or suit.

54. What different kinds of jurors are there?

Grand jurors, and *traverse* or *petit* jurors.

55. What are grand jurors?

The grand jury is a body of men, selected according to law, which is called the Grand Inquest of the Commonwealth for the proper county, before whom all bills of indictment must be laid, and without whose approval of them, on hearing the evidence on the part of the prosecution, an accused person cannot be put on his trial; and the nature of whose powers and duties is indicated by the following oath which they take, viz: "you do swear (or affirm) that as members of the Grand Inquest of the county of ———, you will diligently inquire and true presentment make as well of all such matters and things as shall be given you in charge, as of those things you shall know to be presentable here; the Commonwealth's council, your fellow's, and your own, you shall keep secret; you shall present no person for envy, malice, hatred, or ill-will; neither shall you leave any one unpresented through fear, favor, affection, reward, gain, or any hope threof; but you shall present all things truly, as they come to your knowledge, to the best of your understanding and belief."

There are powers and duties, also, imposed upon them by special Acts of Assembly; such as examining and reporting upon the State of the public buildings of the county, the condition and treatment of the prisoners in the county goal, and of persons in the poor house; approving or disapproving of the construction of county bridges; and in relation to like matters.

56. How are grand jurors selected?

At the drawing of jurors by the Commissioners and Sheriff of the county before the holding of every court of Oyer and Terminer and Quarter Sessions of the Peace, the twenty-four names first drawn from the wheel, as directed by law, are the names of the persons to be summoned as grand jurors for that court; any number of whom not less than twelve nor more than twenty-three may be sworn as the grand jury.

57. How is the finding or decision of the Grand Jury, on a bill of indictment, indicated?

By their foreman's endorsing on the bill of indictment the words "a true bill," or "not a true bill" or "ignoramus," with his name signed thereto.

58. What number of the grand jury must agree in order to the finding of a "true bill?"

At least twelve of their number.

59. What are *traverse* or *petit* jurors?

The jurors sworn to try a cause or suit before the court, on the issues between the parties.

When so sworn, they are said to be *impannelled* in that suit or case. The whole number of jurors summoned for any term of a court is the general *panel.*

60. Do the jurors receive any pay for their attendance at court?

They are paid each a dollar a day, and mileage, out of the county treasury.

Justices of the Peace, and Aldermen.

61. What officers are Justices of the Peace?

They are judicial officers and magistrates, in each township, borough, and ward. Their proper jurisdiction, as appointed to "keep the peace," relates to criminal matters, having power to take complaints, and to arrest and to hold to bail, or to commit to gaol, in order to trial in the proper court, in general for all crimes and offences; and they are authorized to punish, by fine and imprisonment, on summary conviction, for particular misdemeanors. They are authorized to administer oaths and affirmations; to take the proof and acknowlegement of deeds, indentures of apprenticeship, and other instruments of writing, and to perform the ceremony of marriage. They are also vested, by special Acts of Assembly, with jurisdiction to try and determine civil suits, where the demand does not exceed a hundred dollars; appeals being allowed, in the manner directed by law, from their judgments, to the Courts of Common Pleas, and their proceedings being subject to review and correction, in reference to matters of law, on writs of *Certiorari* from those courts. They have various other powers and duties imposed on them by special Acts of Assembly. *f*

62. How are the Justices of the Peace and Aldermen appointed?

"Justices of the Peace or Aldermen shall be elected in the several wards, boroughs and townships, at the time of the election of constables by the qualified voters thereof, in such number as shall be directed by law, and shall be commissioned by the Governor for the term of five years; but no township, ward or borough shall elect more than two Justices of the Peace or Aldermen, without the consent of a majority of the qualified electors within such township, borough or ward." *Cons. of Pa. Art.* VI. *sect.* VII.

63. Have there been Acts of Assembly passed, directing the number of Justices of the Peace and Aldermen to be elected, and the manner of their election, in each township, ward and borough?

Yes. They provide that there shall be elected, by the qualified voters of the respective townships, wards and boroughs, every five years, at the times and places fixed for holding elections of constables therein, two Justices of the Peace in each township, and in each ward of a borough, and two Aldermen in each ward of a city, except in the city of Philadelphia, and the incorporated districts of the county of Philadelphia, where one Alderman shall be elected for each

f See, further on, head "Justices of the Peace," chap. vii.

ward; and an additional number of Justices or Aldermen, not exceeding two, in each township, ward or borough, when the electors thereof shall so determine by their votes in the manner prescribed.

64. What officers are Aldermen?

They are judicial officers and magistrates, elected and commissioned, in the manner above mentioned, for each ward of the cities, having the same jurisdiction within their wards respectively that Justices of the Peace have within their townships, wards or boroughs; with cognizance, also, especially of prosecutions and suits for the violation of the ordinances of the cities, and with duties and authority in a great many matters and proceedings under them.

65. Does the jurisdiction of a Justice of the Peace extend throughout the county in which he resides?

Yes; though he can only act within his proper township or ward, he has cognizance of matters, under their jurisdiction, occurring any where within the county, and his process may be executed any where within it.

66. Does the jurisdiction of Aldermen extend throughout their cities respectively?

They must reside, and act, only, in their proper wards; but they have cognizance of all matters, under their jurisdiction, occurring and transacted within the cities respectively, and their warrants, writs and process may be served and executed any where within them.

67. What compensation do Justices of the Peace and Aldermen receive for their services?

They receive for their services, and duties performed, fees fixed by law; which are taxed and recovered as costs in the prosecutions and suits before them, or paid by the persons for whom the services are performed.

Constables.

68. How are constables appointed?

There are two constables elected every year, by the people, for each township, borough and ward. *g*

69. What are their powers and duties, in general?

As executive officers of the law, they have authority "to keep the peace," and to arrest all offenders, in their proper districts; they are obliged to execute warrants, writs and process of Justices of the Peace; and various duties are imposed on them by special Acts of Assembly.

g See, further on, head "Constables," chap. vii.

70. What are their duties in relation to the courts of justice?

They are required to attend the regular terms of the Court of Quarter Sessions of the Peace of the county, in order to make return of any offences committed within their townships, boroughs or wards; and a certain number of them may be selected by the courts to attend during the sittings thereof, for the purpose of preserving order, enforcing the rules of the court, and executing its commands and process.

71. What compensation do constables receive for their services?

They are allowed fees for specific services, as prescribed by law; and they receive from the county daily pay for their attendance upon the courts, and a fixed compensation for the performance of some other duties required of them by Acts of Assembly.

Tipstaves.

72. What are tipstaves?

The several courts are authorized to appoint tipstaves to attend upon them, to act as subordinate executive officers thereof, in preserving order, enforcing the rules of the courts, and executing their process. They receive from the county a fixed sum for each days' attendance at the courts.

CHAPTER VII.

OF THE STATE, ITS CITIZENS AND OFFICERS; AND COUNTIES AND TOWNSHIPS, CITIES AND BOROUGHS, AND THE OFFICERS THEREOF.

1. Is the State a political body?

The State as an organized government is a political body. It is considered in law as a public municipal body, in the nature of a corporation. *a*

The State may sue, and, in certain cases, under the federal constitution, and the laws of the State, it may be sued. The State cannot be sued by its own citizens, or by those of another State, or of a foreign country, except as provided by the laws of the State.

State seal.

2. Is there a State seal?

Yes. There is the great seal, and the lesser seal of the State. They are kept in the office of the Secretary of the Commonwealth, and used to seal commissions, and other public documents, issued in the name and by the authority of the State. *b* *Cons. of Pa. Art.* VI. *sect.* V.

Prosecutions.

3. How are all prosecutions to be carried on?

"All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same." *Cons. of Pa. Art.* V. *sect.* XI.

Prosecutions are charges, proceedings, informations and indictments, in law, for crimes and misdemeanors.

Process.

4. What must be the style of all process, by the constitution?

The style of all process shall be "The Commonwealth of Pennsylvania." *Cons. of Pa. Art.* V. *sect.* XI.

Citizens of the State.

5. Who are citizens of the State?

The free inhabitants of the State, born within the United States, or naturalized under the Acts of Congress. *c* As to the right of suffrage, or of voting at elections, see, further on, chapter VIII.

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a See head "Corporations," Part the Second, chap. ii. p. 121.

b See head "Secretary of the Commonwealth," further on, in this chap.

c See further on, p. 236 ques. 11; and as to the naturalization of aliens, see Part the First, chap. iii. p. 57, 58.

6. How may the inhabitants of the State be divided?

Into citizens of the United States, or aliens. *d*

Aliens.

7. How may aliens be divided?

Into alien friends, the subjects or citizens of countries at peace with ours; and alien enemies, the subjects or citizens of countries at war with ours.

8. Are alien friends, whilst residing in the State, subject to the laws thereof, and entitled to their protection?

Yes.

9. What are the disabilities of aliens, in this State?

They cannot hold offices, vote at elections, nor act as jurors; they cannot, in general, be employed in the performance of duties connected with the administration of public affairs; in other respects they are entitled to the rights and privileges of citizens.

10. What right have alien friends to hold and dispose of property, under the laws of the State?

In general, they may hold and dispose of personal property as fully as citizens; and by Acts of Assembly they are made capable of holding and disposing of real estate by descent or devise, and, with some restrictions as to quantity, of purchasing, holding and conveying lands.

Of free colored persons.

11. Are free colored persons resident therein citizens of the State?

It has been decided by the Supreme Court of the State that they are not citizens. It was thus determined that they had not the rights of electors under the State constitution of 1790. By the present constitution of the State the right of suffrage is confined to "free white persons. *e*

There were negro and mulatto slaves, owned by individuals, in Pennsylvania, when a province of Great Britain, and to some extent after it became an independent State.

In 1780 was passed the Act of Assembly "for the gradual abolition of slavery." It forever abolished slavery or servitude for life as to all persons thereafter born in the State. It declared, in general, "that no man or woman of any nation or color, shall at any time thereafter be deemed, adjudged or holden as slaves or servants for life, but as free men and women." By the Act, negro and mulatto slaves then in the State were to be registered by their owners, within a certain time, on the omission of which they were to be immediately free; if duly registered, they were to be held as slaves, with certain responsi-

d See head "citizens of the United States, and aliens," Part the First, chap. i.

e See Part the First, chap. ii. p. 123.

bilities and restrictions in regard to them placed upon the owners. The Act provided that negro and mulatto children born thereafter within the State, who would in case the Act had not been passed, have been born servants for years, or life, or slaves, should be servants until they attain unto the age of twenty-eight years, to the persons who would in such case have been entitled to the service of such children; such servants to be held and treated as servants bound by indenture for years. It has been judicially decided, that under the Act the children of such servants for twenty-eight years were not subject to a similar servitude, but were free.

As exceptions to the general provisions of this Act of Assembly, it also provided that it should not apply to the domestic slaves attending upon members of Congress from the other States, foreign ministers and consuls, and persons passing through or sojourning in this State, and not becoming resident therein, and seamen employed in ships not belonging to any inhabitant of the State; such domestic slaves (except in the case of members of Congress, foreign ministers and consuls) not to be retained in the State longer than six months.

From the length of time that has elapsed since the passage of the Act abolishing slavery, and the state of things consequent upon it, and that has intervened, it may properly be said that slavery does not now exist in Pennsylvania.

Citizens of other States.

12. What are the rights and privileges in Pennsylvania of citizens of other States of the Union?

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." *Cons. of U. S. Art.* IV. *sect.* II. *f*

Census or enumeration of inhabitants.

13. What provision is there by law on this subject?

By Acts of Congress, in pursuance of the federal constitution, a census is to be taken for all the States once in every ten years. *g* And by the laws of the State an enumeration of the taxable inhabitants in each county is made every seven years, by the township assessors, under the direction of the county commissioners. It is on an enumeration thus made that an apportionment of the members of the Senate and House of Representatives of the State among the several counties, is to be fixed by the Legislature every seven years. *h*

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f See Part the First, chap. vi. p. 83.
g See Part the First, chap. iii. p. 42.
h See Part the Third, chap. iv. p. 207.

OF OFFICERS IN GENERAL.

Appointment and election.

14. Does the constitution of the State provide that there shall be certain State and county officers, and in what manner they shall be appointed or elected?

Yes. Such offices may be called constitutional offices.

15. What offices are there established by the State constitution, the mode of appointment to which is fixed by it?

The offices of Secretary of the Commonwealth, judges of the courts of record, State Treasurer, who is to be elected by the Legislature, and prothonotaries of the Supreme Court, who are appointed by the said Court.

The judges of the courts are appointed by the Governor by and with the consent of the Senate. And he has power to fill vacancies that may happen in such judicial offices during the recess of the Senate, by granting commissions which shall expire at the end of their next session. *Cons. of Pa. Art.* II. *sect.* VIII.

16. What officers are there who shall, according to the provisions of the State constitution, be elected by the people?

The Governor, sheriffs and coroners, prothonotaries of the courts, except of the Supreme Court, clerks of courts, recorders of deeds, registers of wills, and justices of the peace and aldermen.

17. What has the constitution provided, as to the power of appointment to fill vacancies, where the officers are regularly elected by the people?

Vacancies in the offices of sheriff, coroner, prothonotary or clerk of court, recorder of deeds, and register of wills, shall be filled by appointments to be made by the Governor, to continue until the next general election, and until successors shall be duly elected and qualified. *Cons. of Pa. Art* VI. *sect.* III.

18. May new offices be established, and the manner of appointment thereto be directed, by Act of Assembly?

Yes.

19. What provision is there in the State constitution as to officers, the mode of whose appointment is not provided for by it?

"They shall be appointed or elected as shall be directed by law." *Cons. of Pa. Art.* VI. *sect.* VIII. *i*

20. How may officers be classed?

As State officers, county officers, and township officers.

21. How may officers be classed in relation to the nature of their duties?

As judicial or executive; and as civil or military.

i See, above, Part iii. chap. v. head "Power of appointment."

22. Can offices be created in any other manner than according to the provisions of the constitution and laws.

No.

Right to vote for officers and mode of election.

23. As to the right of citizens to vote at elections, and the time places and manner of holding and conducting elections in the State, see the title Elections, chapter VIII, further on, in this work.

Religious sentiments.

24. What is the provision of the constitution as to any disqualification to hold office on account of religious sentiments?

"No person who who acknowledges the being of a God and a future state of rewards and punishment, shall on account of his religious sentiments be disqualified to hold any office or place of trust or profit under this Commonwealth." *Cons. of Pa.* IX. *Art. sect.* IV. See *Cons. of U. S. Art.* VI. 3.

Residence of officers.

35. Is residence in a county necessary in order to be appointed to an office therein?

"No person shall be appointed to an office within any county who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken. *Cons. of Pa. Art.* VI. *sect.* VIII.

Duellist disqualified.

26. What is the provision of the constitution as to a duellist being disqualified to hold office?

"Any person who shall fight a duel, or send a challenge for that purpose, or be aider or abettor in fighting a duel, shall be deprived of holding any office of trust or profit in this Commonwealth, and shall be punished otherwise in such manner as is, or may be, prescribed by law; but the Executive may remit the said offence and all its disqualifications." *Cons. of Pa. Art.* VI. *sect.* X.

27. Is the fighting of a duel, or sending a challenge for that purpose, punishable by law in this State?

The fighting of a duel is punishable, according to the injury done, as an offence or crime at the common law; and the sending or accepting a challenge to fight a duel, or carrying or delivering it, or aiding or abetting therein, or consenting to act as a second in an intended duel, is made, by Act of Assembly, a misdemeanor punishable by fine and imprisonment, disqualification to hold office, and forfeiture of rights of citizenship.

Commissions.

28. How are all commissions of office to be made out and issued?

"All commissions shall be in the name and by the authority of the Commonwealth of Pennsylvania, and be sealed with the State seal, and signed by the Governor." *Cons.of Pa. Art.* VI. *sect.* V.

Incompatibility of offices.

29. What is the provision of the State constitution as to members of Congress or officers of the United States holding office in this State?

"No member of Congress from this State, or any person holding any office or appointment of profit or trust under the United States, shall at the same time hold or exercise any office in this State, in which a salary is, or fees or perquisites are, by law, annexed." *Cons. of Pa. Art.* VI. *sect.* VIII.

"No member of Congress or person holding any office under the United States or this State shall exercise the office of Governor." *Cons. of Pa. Art.* II. *sect.* V.

30. What is the provision of the constitution as to members of the Legislature being appointed to office?

"No member of the Senate or House of Representatives shall be appointed by the Governor to any office during the term for which he shall have been elected." *Cons. of Pa. Art.* VI. *sect.* VIII.

By various Acts of Assembly the holding of offices or appointments under the State is made incompatible with the holding or exercising of offices or appointments under the United States. The Acts provide that every person holding any office or appointment under the general government, as officer or agent, shall be incapable of holding or exercising, at the same time, any of numerous offices or appointments specified, under the State, or the laws thereof. In this number are included certain county, township, city and borough, as well as State officers.

There are also many State offices that are made, by Act of Assembly, incompatible with each other; of which no person can hold more than one at the same time.

It is provided, by Act of Assembly, that members of the Legislature shall not be incompetent to receive appointments to office after they shall have resigned their seats.

Re-eligibility.

31. Are there provisions in the State constitution limiting the re-eligibility to certain offices?

Yes. "The Governor shall not be capable of holding his office longer than six in any term of nine years." *Cons. of Pa. Art.* II. *sect.* III.

"No person shall be twice chosen or appointed sheriff in any term of six years." *Cons. of Pa. Art.* VI. *sect.* I.

There are, also, Acts of Assembly limiting the re-eligibility to certain offices. As in the case of a County Treasurer, who cannot serve in the office for more than two years in any term of four years.

32. What power has the Legislature to declare offices incompatible?

"The Legislature may by law declare what State offices are incompatible." *Cons. of Pa. Art.* VI. *sect.* VIII.

Oath of office.

33. Are all officers obliged, by law, to take an oath or affirmation of office?

"Members of the General Assembly, and all officers executive and judicial, shall be bound by oath or affirmation to support the constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity." *Cons. of Pa. Art.* VIII.

"The Senators and Representatives before mentioned, and the members of the State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution." *Cons. of U. S. Art.* VI. *sect.* 3.

All county and township officers are, also, required by Act of Assembly to take and subscribe an oath or affirmation to support the constitution of the United States and that of the Commonwealth, and to perform the duties of their offices with fidelity.

Tenure of offices.

34. What is *tenure* of office?

It is, in this country, the condition on which an office is held. An office may be held *at will*, or the pleasure of the appointing power; for life, during good behaviour; or for a term of years, during good behaviour. There can, now, be no office for life in this State.

35. What is the provision of the State constitution as to the condition on which offices shall be held?

"All officers for a term of years shall hold their offices for the terms respectively specified, only on the condition that they so long behave themselves well; and shall be removed on conviction of misbehaviour in office or of any infamous crime." *Cons. of Pa. Art.* VI. *sect.* IX.

36. What provision is there in the Declaration of Rights on the same subject?

"The Legislature shall not create any office the appointment to which shall be for a longer term than good behaviour." *Cons. of Pa. Art.* IX. *sect.* XXIV.

Impeachment.

37. Are all civil officers of the State liable to impeachment?

"The Governor and all other civil officers under this Common-

wealth shall be liable to impeachment for any misdemeanor in office." *Cons. of Pa. Art.* IV. *sect.* III. *j*

Removal of officers.

38. What is the provision of the constitution as to the removal of officers for misbehaviour?

"All officers for terms of years, shall be removed on conviction of misbehaviour in office, or of any infamous crime." *Cons. of Pa. Art.* VI. *sect.* IX.

39. May the Governor remove officers appointed or commissioned by him, in cases of such conviction?

Yes; except where it is otherwise provided in the constitution. *k*

40. What is the provision of the constitution as to the removal of officers on the address of the Legislature?

"But for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of them," (the judges of the courts of record) "on the address of two-thirds of each branch of the Legislature." *Cons. of Pa. Art.* V. *sect.* II.

41. How may persons holding offices *at will* be removed?

By the appointing power, at the pleasure thereof, at any time.

Officers indictable for neglect and misdemeanor.

42. May officers be indicted for neglect and misdemeanor in office?

All officers may be indicted and punished for wilful neglect of duty and misbehaviour in office. They may be punished criminally, also, for bribery, or other corruption in office.

Right to office, how determined.

43. How is a question as to the right to hold a particular office to be legally determined?

By a proceeding in law, on what is called a *Writ of Quo Warranto.* It is a writ issued by the proper court of justice, on the application of the Attorney General, or his deputy, or any person desiring to prosecute the same, commanding the sheriff of the county to summon a person to appear before the court and show *by what authority* he exercises a particular office. If judgment of ouster and exclusion be given against the defendant in such a case, it may be enforced by a writ of injunction, to be awarded by the court, enjoining him from exercising the office, and obedience thereto may be compelled by writ of attachment or sequestration.

Writs of Quo Warranto may be issued by the Supreme Court of the State, in all cases; and by the Courts of Common Pleas of the respective counties, in cases of county and township officers.

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j See, above, Part the Third, chap. v. head "Senate."

k See, above, Part the Second, chap. v. p. 144.

STATE, AND STATE OFFICERS.

43. How are the civil affairs of the State conducted, and its internal government carried on, under the constitution and laws?

The general affairs of the State are conducted by State officers, and its internal government by county and township or city and borough officers.

44. What is called the State administration?

The Governor and Heads of Departments.

45. What officers are Heads of Departments?

The Secretary of the Commonwealth, Auditor General, State Treasurer, Surveyor General, and Attorney General of the State.

46. What is the executive department of the State?

The Governor, and other executive officers of the Commonwealth.

47. How are State officers paid for their services?

By annual salaries from the State, or by fees or perquisites of office paid by the persons for whom their services may be performed.

48. How is the revenue of the State, or money for the support of its government, obtained?

From the sale of unappropriated lands belonging to the Commonwealth, and the purchase money due on previous sales; from dividends on stock which it holds in Banks, Bridge Companies, Turnpike Road Companies, and other corporations; from fees paid into some of the public offices; from tolls on the State canals and rail roads; and from duties and taxes, of various kinds, assessed and collected under the laws of the State.

The principal State taxes and duties are, in 1845, on licenses to auctioneers and the amount of their sales, on licenses to vendors of merchandize, licenses to innkeepers, licenses to pedlars, on bank stock and dividends, on writs, mortgages and proceedings in courts, on fees in certain offices, on collateral inheritances, and on real and personal property, persons, trades, occupations and professions; on mortgages, money owing by solvent debtors, by promissory note, penal or single bill, bond or judgment; on all articles of agreement and accounts bearing interest, except notes for work and labor done and bank notes; on shares or stock in any bank, institution or company incorporated by the laws of this Commonwealth, or of any other State or government; on all shares of stock or weekly deposits in any unincorporated saving fund institution; on the capital stock of banks and bank dividends; on all public loans and stocks whatsoever, except those issued by this Commonwealth; on monies loaned or invested on interest in any other State; on stock brokers, bill brokers and exchange brokers; on household furniture, including gold and silver plate, when the value thereof exceeds the sum of three hundred dollars, and on pleasure carriages and watches.

49. How did the unappropriated lands in the State become vested in the Commonwealth?

The lands belonging to the proprietaries of Pennsylvania, as a province of Great Britain, became, on the termination of the American revolution, vested in the Commonwealth. A pecuniary compensation was allowed to their heirs and representatives by Act of Assembly.

50. Are many of the State taxes assessed and collected by county and township officers?

Yes, as by the township, borough, and ward assessors and collectors, with the county rates and levies, and by the county treasurers.

51. Who has the care and charge of the revenue and money of the State?

The State Treasurer, who receives and pays out all monies belonging to the State.

52. By what authority only can money be paid out of the State treasury?

"No money shall be drawn from the treasury but in consequence of appropriations made by law." *Cons. of Pa. Art.* I. *sect.* XXII.

53. How must all accounts and claims against the Commonwealth be settled before they can be paid?

In general, all accounts and claims against the Commonwealth must be examined and adjusted by the Auditor General before they can be paid by the State Treasurer. *l*

54. How may the expenses of the State government, in general, be classed?

Into the ordinary and extraordinary expenses of government.

55. What are the ordinary expenses of the State government?

The payment of the salaries of State officers, the expenses of the Legislature, and the usual annual operations of the government under the laws of the State.

56. What are the extraordinary expenses of the government?

The payment of the debts due by the State, and of appropriations by law for special objects, as internal improvements, charitable institutions, colleges, schools, and the like.

57. What are State stocks?

Debts due by the Commonwealth, for money loaned to it, for which certificates of debt have been given, payable at fixed periods, bearing interest to be paid annually or semi-annually, and transferrable from one person to another.

A large amount of indebtedness has been incurred by the State of Pennsylvania, for money borrowed for the construction of the public

l See head "Auditor General," further on, in this chapter.

canals, rail roads, and other improvements. These loans have been *funded*, by issuing State stock therefor, redeemable at distant periods. They are called permanent loans. Such loans can only be taken, and stock thus issued, by authority of an Act of Assembly. It is generally directed to be done through the agency of the Governor or State Treasurer.

Secretary of the Commonwealth.

58. Is the office of Secretary of the Commonwealth established by the State constitution, and the mode of appointment and tenure prescribed by it?

The Governor "shall appoint a Secretary of the Commonwealth during pleasure." *Cons. of Pa. Art.* II. *sect.* VIII.

59. What does the constitution provide as to the duties of the Secretary of the Commonwealth?

"The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and when required lay the same and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined him by law." *Cons. of Pa. Art.* II. *sect.* XV.

60. What are the duties, in general, of the Secretary of the Commonwealth?

In the office of the Secretary of the Commonwealth are deposited the public archives, documents and papers of the State; the original rolls of the laws are filed and recorded there; and the seal of the State is kept in it. It is the duty of the Secretary of the Commonwealth, through his department, to keep a register of all the official acts, proceedings and appointments of the Governor; to issue commissions to State and county officers, as directed by law, under the seal of the State; and to furnish authenticated copies, when duly required, of the laws, records and papers in his office. The returns of elections of members of Congress, State and county officers, are transmitted to him, and filed in his office. He has the superintendence of the publication and printing of the laws, and of the distribution of the printed copies thereof, in the manner prescribed by law. It is through him that communications are properly made to the State government, and from it to other governments, or to individuals. He is also the Superintendent of the Common Schools of the State.

The salary of the Secretary of the Commonwealth is twelve hundred dollars a year; and as Superintendent of Common Schools, an additional sum of five hundred dollars a year.

61. Is there an officer called Deputy Secretary of the Commonwealth?

Yes. He is appointed by the Secretary of the Commonwealth, with the approbation of the Governor, and removable by the said Secretary whenever he shall deem it expedient. He has a salary of a thousand dollars a year.

Attorney General.

62. How is the Attorney General appointed?

By the Governor, at his pleasure. *m* He receives a salary of three hundred dollars a year, and is entitled to fees of office prescribed by law.

State Treasurer.

63. What does the constitution provide as to a State Treasurer?

"A State Treasurer shall be elected annually, by joint vote of both branches of the Legislature." *Cons. of Pa. Art.* VI. *sect.* VI.

64. What are, in general, his duties?

He has, through his department, the custody and charge of the public monies; pays and disburses money out of the treasury, in the manner directed by law. He is required to furnish the Auditor General, every month, with an account of all monies received and paid by his department during the preceding month, together with the vouchers for the payments so made. And it is his duty, to make, annually, to the Legislature, a report exhibiting in detail the receipts and expenditures of the State treasury for the preceding year, designating the name of every person from whom monies were received, and to whom paid, and on what account; and, also, to prepare and present, to the Legislature, at the commencement of every session, a report on the subject of finance, containing estimates of the public revenue and public expenditures, and plans for the support of the public credit, and for improving and increasing the revenue.

65. What salary does the State Treasurer receive?

Fourteen hundred dollars, a year.

Auditor General.

66. How is the Auditor General appointed?

The office is established by Act of Assembly; and he is appointed by the Governor for three years, but may be removed by the Governor on the address of both houses of the Legislature.

67. What are his duties, in general?

To examine and adjust the accounts of officers and other persons entrusted with the receipt, charge or collection of the public money, or to whom the possession of the public money may have come, he being invested, for this purpose, with power to compel such persons to exhibit their accounts to him, and to inforce the attendance before him of such parties, and witnesses, with their books, accounts and papers, as he may deem necessary, and to take their testimony on oath or affirmation; to examine and adjust the accounts of all persons having claims against the Commonwealth; to receive the monthly accounts of the State Treasurer of the receipts and payments by him, with the vouchers for the payments, and to enter the same, to proper

m See, above, Part the Third, chap. vi. "Judiciary."

accounts, on the books of his office, so as to furnish a correct account of the financial affairs of the State; and to direct and superintend the recovery and collection, in due course of law, of all debts due to the Commonwealth, on accounts settled in his office, or otherwise, from officers or others, the parties and their sureties. It is his duty to make a report, annually, to the Legislature, exhibiting, in the abstract, a statement of the finances of the Commonwealth.

68. What is the salary of the Auditor General?

Fourteen hundred dollars a year.

69. How are claims and demands on the Commonwealth generally settled and paid?

The State Treasurer is authorized by law to make, without warrant or order to him, all payments which are so fixed by law, that the sum to be paid cannot be affected by the settlement of any account; as salaries of officers, and grants, annuities and pensions, established by law. In general all claims against the Commonwealth, not of such a nature, must be first examined and adjusted by the Auditor General, and signed by him; and they must then be submitted, with all the vouchers and papers appurtinant to them, to the State Treasurer, for his revision and approbation, he being invested with the same power for the purpose of examining them as the Auditor General; in cases where the Auditor General and State Treasurer disagree, the decision of the Governor to be conclusive; and on all accounts so settled the Auditor General is required to draw his warrant upon the State Treasurer for the amount and balance due, if there is an appropriation by law therefor.

All public accounts, thus examined and settled, are entered on the books of the Auditor General's office, and filed there with the vouchers and papers relating to them.

Appeals may be had from the settlement of accounts by the Auditor General and State Treasurer, on the part of persons dissatisfied therewith, to the Court of Common Pleas of the county in which the seat of government is, in the manner directed by Act of Assembly.

Surveyor General.

70. What is the nature of the business of this office?

It is an office established by Act of Assembly. There are preserved in it all the documents and papers relating to the public lands, the applications, warrants, surveys, grants and patents therefor, under the provincial government, and since. Patents are issued from this office on old warrants and titles, for lands formerly belonging to the State; and applications, warrants and patents for lands of the Commonwealth yet vacant. *n*

By a late Act of Assembly it was provided that the office of Secretary of the Land office, whose business also related to the public

n See, above, in this chapter, p .144.

lands, should be abolished, and all the documents and papers thereof be transferred to the office of the Surveyor General, who should perform the duties formerly required of that officer.

71. How is the Surveyor General appointed?

By the Governor, for three years; but he may be removed from office by the Governor, on the address of both houses of the Legislature.

72. What is the salary of the Secretary of the Land office?

Twelve hundred dollars a year.

Canal Commissioners.

73. What officers are canal commissioners?

They are the officers who have the general superintendence and management of the canals and rail roads belonging to the State.—There are three Canal commissioners, forming a Board, of which one of them is the President, and having a stated clerk. It is under their direction that all the repairs on the canals and rail roads are done, improvements made, and extensions and new lines constructed.—They make contracts on the part of the State for these purposes. They purchase for the Commonwealth real estate occupied by the canals and rail roads, or enter into agreements respecting the same; assess damages done to the land or property of individuals, or otherwise suffered by them. They have power to regulate transportation and travelling on the canals and rail roads, to fix the rates of tolls and the modes of collection thereof, to establish rules for these purposes, and impose fines and penalties for the violation of them.—They appoint all the agents and persons employed in the service of the State on the canals and rail roads. They are required to make an annual report to the Legislature of the affairs of the canals and rail roads, and in relation to their official duties. The office of the Board is at the seat of government of the State.

The Canal Commissioners are elected by the people, one every year, to serve for three years; one of them being an engineer. Their compensation is three dollars for every day employed in the performance of their duties. Vacancies are supplied by appointments made by the Governor, to continue until the next general election.

The agents in the service of the State on the canals and rail roads, are, in general, engineers, supervisors, collectors, lock-tenders, weigh-masters, and the like.

Territorial Divisions.

74. How is the State divided for the convenience of internal government, and the administration of law and justice?

Into counties, and each county into townships, in general; cities and boroughs forming parts of their respective counties, except where it is otherwise provided, and being divided into wards.

Counties.

75. How many counties are there in the State?
Fifty eight.

76. What are the names of the counties severally in the State?
Philadelphia, Bucks, Chester, Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland, Westmoreland, Washington, Franklin, Fayette, Montgomery, Dauphin, Luzerne, Huntingdon, Allegheny, Mifflin, Delaware, Lycoming, Somerset, Greene, Wayne, Adams, Centre, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Indiana, Jefferson, McKean, Clearfield, Potter, Tioga, Cambria, Bradford, Susquehanna, Schuylkill, Lehigh, Lebanon, Columbia, Union, Pike, Perry, Juniata, Monroe, Clarion, Clinton, Wyoming, Carbon and Elk counties.

77. How are counties erected!
By act of Assembly.

78. Are counties bodies politic or corporate?
Yes. They are made so by Act of Assembly. They are public municipal corporations.

79. May the several counties sue and be sued by their corporate names?
Yes.

80. May the several counties take and hold real estate within their respective limits, and personal property?
Yes; for such objects and purposes as are authorized by law.

81. May the several counties make contracts in their corporate names?
Yes, for the objects and purposes authorized by law.

82. By whom are the corporate powers of a county to be exercised?
By the county commissioners thereof.

83. Is each county authorized to have a county seal?
Yes; and it is to be kept by the county commissioners, whose official acts are to be authenticated by it.

84. Is the title to the court houses, jails, prisons, &c., vested in the several counties, for the use thereof?
Yes. The court houses, jails, workhouses, and buildings for the county officers, are put up and kept in repair, by the counties respectively?

County taxes and expenditures.

85. What are, in general, the objects of expenditure by a county?
The erection and keeping in repair of a court house, gaol, and buildings for the county officers; the accommodation of the courts in the court house whilst in session; the pay of jurors and constables for attendance at court; costs in certain criminal cases; the mainte-

nance of prisoners in gaol; building county bridges; paying viewers of public roads, road and bridge damages; the pay of the officers of the general election in the county; the pay of the sheriff and other officers for services performed for the county; coroners' inquests *post mortem*; the support of the poor where there is a county poor house; and various matters directed by law to be done at the expense of the counties severally.

86. How is money obtained for defraying the expenses of the county?

By taxes assessed and collected for the use of the county, called county rates and levies; and from the proceeds of fines and fofeitures in the courts of the county; and certain costs of the court.

87. What does the law direct as to publishing an account of the receipts and expenditures of the county?

It is the duty of the county commissioners to publish annually, in the manner directed, a full and accurate statement of all the receipts and expenditures of the county for the preceding year.

Courts.

88. What courts are held in each county?

Ordinarily, a Court of Oyer and Terminer and General Gaol Delivery, a Court of Quarter Sessions of the Peace, a Court of Common Pleas, and Orphans Court; held, regularly, four times a year. A Register's Court may be held in any county, when required. In some cities and counties there are District Courts, having civil jurisdiction in cases where the value in controversy exceeds a certain amount.

As to the nature and jurisdiction, judges and officers, of these courts, see head Judiciary, Part the Third. chapt. VI.

89. What expenses of the courts are paid by the counties respectively?

In general, the expense of fitting the court house for the accommodation of the courts in their sittings, the pay of constables attending court, the pay of jurors, the costs in criminal cases on acquittals, except where the prosecutor is directed to pay the costs by the jury, as may be done in some cases, and on convictions where the defendant is unable to pay the costs.

90. Is there any thing paid to the county on the proceedings in the courts?

The county is entitled to all fines, forfeitures, &c., by the sentence order or judgment of the court; and to a certain sum (four dollars) on every verdict rendered in a civil suit, to be paid by the successful party, and included in the costs of suit, to be recovered of the other party.

91. How are the expenses of persons in gaol or prison for crimes and offences to be paid.

By the county.

92. Are persons convicted of crimes and offences liable for the costs of prosecution, and the expense of keeping them in prison?

Yes; and the costs and expenses may be recovered of them, if they have property or means whereby it may be done.

93. What is the town or place where the courts are held in the county called?

The seat of justice of the county.

94. What county officers are required, by law, to keep their offices, with the records and papers belonging thereto, at the Seat of justice of the county?

The prothonotary, clerks of courts, register, recorder, sheriff, county commissioners, county treasurer, and county auditors. *Cons. of Pa. Art.* VI. *sect.* IV.

Juries.

95. How are jurors for the several courts in a county to be selected?

By the commissioners and sheriff of the county, in the manner specially directed by the Acts of Assembly. And they are summoned to attend the courts by the sherfff. The subject is more fully referred to, above, under the head "Jurors," Part the third, chapt. VI.

County officers.

96. What county officers are there?

Prothonotary of the Court of Common Pleas, clerk of the Court of Oyer and Terminer and General Gaol Delivery, clerk of the Court of Quarter Sessions of the Peace, clerk of the Orphans Court, register, recorder, sheriff, coroner, county commissioners, county auditors, and county treasurer. The office of an Associate Judge of the Court of Common Pleas in a county is a State office.

97. Are all county officers required to take an official oath or affirmation?

Yes. See, above, p. 241

98. What residence in the county is necessary to a person's being appointed to an office within any county?

One year's residence, by the State constitution. See *Cons. of Pa. Art.* VI. *sect.* VIII.

County Commissioners.

99. How many County Commissioners are there, and how are they elected?

There are three commissioners for each county, one of whom is elected every year, at the general election, to serve for three years. In case of a vacancy the existing commissioners, together with the Court of Quarter Sessions, appoint a person to serve until the next general election, when a new commissioner is to be elected.

100. What are the duties, in general, of the County Comissioners?

To exercise the corporate powers of the county; to make contracts for the county, authorized by law; to make an estimate of the amount of the yearly expenses of the county, and cause it to be assessed on the several townships; to regulate the apportionment and assessment of the county rates and levies; to pay the expenses of the county by orders on the County Treasurer; and to perform various duties, relating to the affairs of the county, and also in reference to the assessment and collection of State taxes as directed by Acts of Assembly.

Any two of the County Commissioners, when regularly convened, form a board, and are competent to perform all the duties appertaining to the office of county commissioners.

They are required to appoint a clerk, whose duty it is to keep the books and accounts of the board, record or file their proceedings and papers, attest all orders and warrants issued by them, and perform all acts pertaining to such office. He receives for his services such sum as the commissioners at their first meeting every year agree upon.

The county seal is kept by the county commissioners, at their office; and is applied by them to their warrants, precepts, certified copies of their proceedings, and their other official papers.

The lists of taxable inhabitants, the returns and valuations of taxable property, and assessments of taxes, made by the township assessors, are filed in their office.

The county commissioners are required to publish every year a statement of the receipts and expenditures of the county, as settled by the County Auditors.

They are required to have their office in the public buildings of the county, at the seat of justice of the county.

The county commissioners receive each one dollar and fifty cents for every day they necessarily attend upon the duties of their office.

Enumeration of taxable inhabitants. [e]

101. What is the duty of the county commissioners in relation thereto?

They are, every seventh year, to issue their precepts to the several assessors, requiring them to take an enumeration of all the taxable persons, above the age of twenty-one years, resident in their respective townships; with the number of the deaf and dumb, and blind. The returns of the enumeration are filed in the County Commissioners' office; and duplicates thereof transmitted by them to the Governor of the State, to be laid by him before the Legislature. See, also, on this subject, in the same chapter, p. 237.

County rates and levies.

102. What are county rates and levies?

Taxes directed, by the county commissioners, to be assessed, levied and collected, and paid into the county treasury, in order to defray the expenses of the county.

103. How are the county rates and levies laid and assessed?

The county commissioners are required, every third year, to issue their precepts to the assessors, commanding them to make, and return into the office of the commissioners, correct lists of the names of all the taxable persons residing within their respective townships, boroughs and wards, and of all property taxable by law, together with a just valuation of such property, to be made by the assessors and assistant assessors, which lists are called the *triennial* assessments; these returns of the assessors are to be examined and corrected by the county commissioners: And in each of the two years succeeding the triennial assessments the commissioners are to send their precepts, with transcripts of those assessments, examined and corrected as aforesaid, to the assessors respectively, for the purpose of having returns made thereon by them of changes and additions, occurring since the triennial assessment, as to the taxable persons, property and the valuation thereof; which returns are, likewise, to be subject to the examination and correction of the county commissioners.

It is the duty of the county commissioners, at their first meeting after the general election in every year, to proceed to make an estimate of the probable expenses of the county for the ensuing year; and after the returns of the assessors shall have been made, examined and corrected, as aforesaid, the county commissioners shall apportion the amount, so estimated, among the several townships, boroughs, and wards, according to the adjusted valuation of the taxable property and other objects taxable within the same respectively; and they shall send their precepts with transcripts of the corrected assessments to the assessors severally, together with a statement of the proportion of tax to be assessed, and the rate per cent. in the particular district, borough or ward, in order that the assessors may rate and assess the tax of each individual, giving notice to him of the sum, and the rate *per cent.* and make returns thereof to the commissioners. These transcripts are called *duplicates.* Appeals may be had from any of these assessments, by any person, as prescribed by law, to the Board of County Commissioners, by whom abatements, exonerations or alterations may be made.

For the purpose of equalizing the assessment of *State* taxes in the different counties, a Board of Revenue Commissioners, consisting of one person appointed by the President and Associate Judges of the Court of Common Pleas of each judicial district, together with the State Treasurer, as President of the Board, is to meet at Harrisburg, in the year 1845, and triennially thereafter, on a day to be fixed by the State Treasurer; before whom are to be laid the statements, previously furnished to the State Treasurer by the County Commissioners of the several counties, of the returns made by the assessors of the value, in the aggregate, of all property liable to state taxes in the counties respectively; and who are to ascertain the fair and just value of the property in the several counties taxable by law, equalizing and adjusting the same as far as possible; and according to which valua-

tion, the assessments of *State* taxes are to be made in the several counties, in the manner directed by law. This Board of Revenue Commissioners was first provided for by the Act of Assembly of March 31, 1844. Its first meeting has been held under the Act of Assembly, its proceedings being attended with useful results, more particularly in regard to much important information collected and embodied in the report of the Board to the Governor.

104. What are, in general, the subjects of taxation for county rates and levies?

All real estate, to wit: houses, lands, lots of ground, ground rents, mills, manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, ferries, wharves, and all other real estate not exempt by law from taxation: All personal estate, to wit: horses, mares, geldings, mules and neat cattle over the age of four years; also all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment; also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work and labor done, and bank notes; also all shares or stock in any bank, institution, or company, incorporated by or in pursuance of any law of this Commonwealth, or of any other State or government; and on all shares of stock or weekly deposites in any unincorporated saving fund institution, and all public loans and stocks whatsoever, except those issued by this Commonwealth, and on all money loaned or invested at interest in any other State; also all household furniture, including gold and silver plate, owned by any person or corporation, when the value thereof shall exceed the sum of three hundred dollars; all pleasure carriages, and watches; salaries and emoluments of office, all offices and posts of profit, professions, trades, and occupations, except the occupations of farmers. All single freemen above the age of twenty-one years who follow no occupation or calling are, also, taxable. It is so provided by the Act of Assembly of 31st of March, 1844, (Pamphlet Laws of Pa. for 1844, p. 121,) and previous Acts.

105. Is there any limit, by law, as to the amount of taxes to be laid by county commissioners?

No tax in any county can in one year exceed the rate of one cent of every dollar of the valuation of taxable property." Act of Assembly of April 15, 1834.

106. How are the county rates and levies collected?

By the collectors of the several townships, boroughs and wards; to whom the county commissioners send, every year, their warrants with duplicates of the corrected assessments, requiring and authorizing them to levy and collect the taxes therein assessed, according to law and to pay the same to the county treasurer. They are called collectors' duplicates.

107. Are State taxes sometimes assessed and collected together with the county rates and levies?

Yes. The county commissioners are sometimes directed by law to add to the county rates and levies a certain sum or amount *per cent.* for State purposes, to be assessed and collected by the township collectors in the same manner, and together with them to be paid to the county treasurer, and through him to the State Treasurer; or to assess, and collect in like manner, a State tax on objects not liable to county rates and levies.

County Treasurer.

108. How is the County Treasurer elected?

He is elected by the electors of the county, at the general election, every two years.

No county treasurer can serve in the office for more than two years in any term of four years. In case of a vacancy, the County Commissioners are authorized to appoint a person to fill the office until the expiration of the term for which the county treasurer was elected.

No judge, clerk or prothonotary of any court, register of wills, recorder of deeds, county commissioner or county auditor can be elected county treasurer during his continuance in office; nor shall any county commissioner or county auditor be eligible to the office until the expiration of one year next after the term for which he shall have been elected.

109. What is his duty, in general?

To receive all monies due or accruing to the county, and to pay the same on warrants drawn by the county commissioners, or as directed by law; and to keep a just and true account of all monies received and paid by him.

110. How are the accounts of the county treasurer settled?

He is required, once in every year, to state his account and produce his vouchers, which, after examination by the county commissioners, shall be by them laid before the county auditors for settlement according to law.

111. Has it been the duty of the County Treasurer to receive various State taxes, and pay over the same to the State Treasurer?

Yes; besides the taxes collected by the township collectors for the use of the State, he receives monies due to the Commonwealth for licenses to hawkers and pedlars, licenses to innkeepers, licenses to retailers of merchandize, and from some other sources.

112. Is the county treasurer required to give security for the performance of his duties?

Yes.

113. What compensation does the county treasurer receive for his services?

A certain amount per cent. on all monies received and paid by him

for the county, to be settled by the county commissioners with the approbation of the county auditors; and an amount per cent. fixed by law, on all monies received and paid over by him for the use of the Commonwealth.

Prothonotaries.

114. How are prothonotaries elected?

By the electors of each county, at the general election, for the term of three years; and they are commissioned by the Governor.

115. What is the duty in general of the prothonotary of a county?

He is the clerk of the Court of Common Pleas for the county, records all its proceedings, files all the writs, papers and documents relating to its business; issues writs for the commencement of civil suits therein, and writs of execution, and other process of the court; keeps dockets in which are entered all suits, judgments, liens, and proceedings therein; and has his office at the seat of justice of the county.

116. What compensation does the prothonotary receive for his services?

He receives certain fees, prescribed by law, on writs issued by him, certified copies of records in his office, and for other specific services performed by him.

117. How is any vacancy in the office of prothonotary to be filled?

By the appointment of the Governor, until the next general election, when the electors of the county shall elect a successor to fill the vacancy, and to serve for the term of three years.

Clerks of the Courts.

118. How are the clerks of the several courts appointed?

They are elected by the qualified citizens of the county at the general election, for the term of three years, and are commissioned by the Governor. A vacancy in the office is supplied in the same manner as in the case of a prothonotary.

119. What are their duties, in general?

They record the proceedings of their several courts; issue writs and all process therefrom, and register and file the same. They have their officers at the seat of justice of the county.

120. What compensation for their services do they receive?

Certain fees, fixed by law, for the specific services performed by them.

Register.

122. How is the Register for each county appointed?

He is elected by the citizens of the county at the general election, for the term of three years, and commissioned by the Governor.—Any vacancy in the office is filled in the same manner as in the case of a prothonotary.

123. What are his duties, in general?

Before him all last wills and testaments are proved, and they are then filed and recorded in his office; by him letters of administration, and letters testamentary, are granted and issued to administrators and executors respectively; before him the accounts of executors, administrators and guardians, are exhibited and settled in the first instance. He has his office at the seat of justice of the county. He, also, with one or more of the judges of the Court of Common Pleas, holds a Register's Court, when it is rendered necessary. *o*

124. What is his compensation?

Fees for particular services performed, as prescribed by the Acts of Assembly.

Recorders of Deeds.

125. How are the Recorders of Deeds in the several counties appointed?

There is one Recorder of Deeds elected by the electors of each county, at the general election, for the term of three years. Vacancies are filled in the same manner as in the case of a prothonotary.

126. What is the office of Recorder of Deeds?

It is an office established by law in each county, and to be kept at the seat of justice thereof, in which all deeds, conveyances, mortgages and agreements concerning lands, tenements and hereditaments situate in the county, are authorized to be recorded, after being proved or acknowledged as prescribed by law; and for recording commissions and other instruments of writing required to be recorded; that the evidence thereof may be preserved and perpetuated, and such records be notice to all persons.

127. What are the provisions of the law as to the recording of deeds and conveyances?

By Act of Assembly, all deeds and conveyances concerning lands, tenements or hereditaments, made and executed within the State, are required to be acknowledged or proved ,andrecorded within six months, and those made and executed out of the State for lands therein, within twelve months, after the execution thereof; otherwise they shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration.

It has been decided by the Supreme Court of the State that a deed will be adjudged void, under the Act of Assembly, for want of being recorded, only as against such a subsequent purchaser or mortgagee from the same grantor or under the same title.

It has been decided by the Supreme Court of the State that a deed is not void, for want of being recorded, against a person claiming under a subsequent deed with notice of the previous one; and, also, that actual possession of lands under a deed, is constructive notice to all persons, so that it will not be adjudged void, for want of being recorded, against a subsequent purchaser or mortgagee.

o See Part the Third, chapt. VI, head "Register's Court."

128. What does the Act of Assembly on the subject provide as to the recording of *mortgages*, and their lien and priority?

"That all mortgages, and defeasible deeds in the nature of mortgages, for any lands, tenements or hereditaments within the State, shall have *priority* according to the date of recording the same, without regard to the time of making and executing such deeds; and it shall be the duty of the Recorder of Deeds to endorse upon the mortgage or defeasible deed the time when it is left for record, and to number the same according to the time it is left for record, and if two or more are left for record on the same day, they shall have priority according to the time they are left for record: And no mortgage or defeasible deed in the nature of a mortgage shall be a lien, until such mortgage or defeasible deed shall have been recorded or left for record as aforesaid: Provided, that no mortgage given for the purchase money of land so mortgaged, shall be affected by the passage of this Act, if the same shall be recorded within sixty days from the execution thereof." Act of Assembly, of March 28, 1830, entitled "An Act relative to mortgages."

129. Is it a principle of law that a deed regularly recorded is to be considered as notice thereof to all the world?

Yes.

130. Is it provided by the Acts of Assembly, that copies of deeds regularly recorded, being duly certified by the Recorder under his seal of office, shall be good evidence, and as valid and effectual in law as the deeds themselves?

Yes.

131. What do the Acts of Assembly provide as to the recording of assignments in trust for the benefit of creditors?

That all such assignments which shall not be recorded, in the office of the Recorder of Deeds in the county in which the assignor resides, within thirty days after the execution thereof, shall be considered null and void, against any of the creditors of the assignor.

132. Are all gifts, grants and sales of any estate or interest in lands required by law, to be in writing.

By Act of Assembly, no estate, lease or interest of, in or to any lands, tenements or hereditaments, can be created, granted or assigned, unless by deed or note in writing signed by the parties or their agents lawfully authorized by writing; except all leases not exceeding the term of three years from the making thereof.

133. How are deeds, conveyances and mortgages, for land and real estate in this State, to be acknowledged or proven, in order to be recorded?

All deeds, mortgages, letters of attorney, and other conveyances or instruments of writing, concerning any lands, tenements or hereditaments, situated or being in any part of this Commonweolth, may in order to their being recorded in the proper county, be acknowledged

or proven, and the separate examination of married women taken, before any of the judges of the Supreme Court of the State, or any of the President or Associate judges of the Court of Common Pleas or District Courts for any county in the State; or before any mayor of a city, alderman or justice of the peace, in the State; or before any recorder of deeds for the county, in which the lands &c. are situated.

And all such deeds, mortgages, or other conveyances or instruments of writing, may, for the purpose of being recorded in the proper county, be acknowledged and proven, and the separate examination of married women taken, out of the State, before any of the judges of the Supreme Court or District Courts of the United States, or any of the judges of the Supreme Court, or superior courts, or Courts of Common Pleas, of any State or Territory within the United States, or before any Commissioner appointed by the Governor of this State in any of the other States or the District of Columbia: Or, in foreign countries, before any consul, or vice-consul of the United States, in the state, kingdom, country, or place, where such deeds &c. may be executed; or before any mayor, chief magistrate, or officer, of the cities, towns or places where such deeds &c. are executed, the acknowledgments &c. to be certified under the public seal of such cities, towns or places.

The Governor of the State is authorized, by Act of Assembly, to appoint one or more commissioners in each of the States of the Union, or in the District of Columbia; to continue in office at his pleasure; who shall have authority to take the acknowledgment and proof of any such deed &c. for any lands, tenements or hereditaments lying or being within this State.

It is provided by Act of Assembly, that any release or other instrument of writing, under seal, given to any executor, administrator, guardian, assignee, or trustee, for any legacy, debt, or other personal property, executed and acknowledged and proved as directed by the Act of Assembly, may be recorded in the Recorder's office, in any county, where the persons interested therein may reside, and that the certified copies or exemplifications by the Recorder, under his seal of office, of such releases and instruments of writing shall be good evidence thereof.

134. What compensation for his services does the Recorder of Deeds receive?

He is allowed prescribed fees for every deed or instrument recorded, or service performed, to be paid by the person for whom it is done.

Sheriffs.

135. How are sheriffs appointed?

There is a sheriff elected, for the term of three years, for every county, by the electors thereof, at the general election: and he is commissioned by the Governor.

136. What are the duties in general of the sheriffs?

They are the executive officers of the courts of the counties respectively, and as such authorized and bound to serve and execute all writs, process, orders and sentences thereof. They are, also, by virtue of their office, conservators of the peace, and authorized to suppress riots, to prevent affrays, and to preserve the peace; and to arrest all persons guilty of criminal offences, on personal view, and with or without warrant. They are keepers of the county gaols and prisons, except when it is otherwise ordered by law. They have also various other duties imposed on them by different acts of Assembly.

137. Are sheriffs obliged to enter into recognizance and to give bond with sureties for the performance of their duties?

Yes.

138. Can the sheriff appoint deputies under him?

They may appoint, at their pleasure, under sheriffs or deputies, or gaolers, under them; and remove them at pleasure; for whose official acts they are responsible.

139. May the sheriff require the assistance of the people in suppressing riots or affrays, or arresting criminals?

For such purpose he may raise the *posse comitatus*, or power of the county, that is, such a number of men as is necessary for his assistance; and every person above the age of fifteen years, not aged or decrepid, is bound to obey his summons, a refusal to do so being an indictable offence.

In the exercise of this power for the suppression of riots and unlawful mobs, the sheriff may employ armed persons, or the military. They act on such occasions under the command and direction of the sheriff. The sheriff may use all the force, even to the taking of life, which is necessarily required by the urgency of the case, in order to the suppression of a disorderly and dangerous riot or mob.

140. What compensation does the sheriff receive for his services?

Certain fees for services performed, according to the fee bill established by law. And severe penalties are imposed upon him for demanding or receiving fees not thus allowed.

141. How are vacancies in the office of sheriff filled?

The Governor can appoint a sheriff, to fill the vacancy, until the next general election, when a sheriff is to be elected by the people.

Coroners.

142. How are Coroners appointed?

They are elected by the electors of each county, at the general election, for the term of three years; and they are commissioned by the Governor. Vacancies are filled as in the case of sheriffs.

143. What are the duties, in general, of a Coroner?

To execute the office of sheriff, and perform all things appertain-

ing thereto, in case of the resignation, removal or death of the sheriff, and until another sheriff shall be commissioned; and to serve and execute all legal writs and process in which the sheriff is a party or interested. The coroner is, by virtue of his office, a conservator of the peace, and authorized and bound to preserve the peace, suppress riots and affrays, and to arrest offenders, on personal view, and with or without a warrant, and for this purpose to raise the *posse comitatus;* having, in these respects, the same powers which the sheriff possesses. He is, also, authorized to hold inquests *post mortem*, or on the bodies, of persons dying accidently or by violence.

144. Are Justices of the Peace authorized to hold such inquests on dead bodies?

Yes; in cases where there is no coroner, or he is absent from the county, or unable to attend. It is so provided by Act of Assembly.

Directors of the Poor.

145. What officers are Directors of the Poor?

In some counties, by special Act of Assembly, the poor are supported, and poor houses erected, at the expense of the county, and there are three Directors of the Poor, of whom one is elected every year, to serve for three years, by the electors of the county, at the general election; who have the management of the poor house, and under whose direction the poor laws are carried into effect. See the head "Supervisors," further on, in this chapter.

County Auditors.

146. How are County Auditors elected?

There are three County Auditors for each county, of whom one is elected every year, at the general election, to serve for three years.

147. What are the duties, in general, of the County Auditors?

The Auditors of every county, any two of whom when duly convened shall be a quorum, shall audit, settle and adjust the accounts of the commissioners, treasurer, sheriff and coroner of the county, and make report thereof to the Court of Common Pleas of the county, together with a statement of the balance due from or to such officers. They are also authorized to settle the accounts of some other officers, as directed by Act of Assembly.

148. What power may the County Auditors exercise, in their proceedings, in order to settle the accounts of these officers?

They have power, by law, to issue subpœnas for, and to compel by attachment, the attendance before them of the officers whose accounts they are required to adjust, and of any persons whom it may be necessary to examine as witnesses, and to compel the production of all books, papers and vouchers relative to such accounts, in like manner and to the same extent as any Court of Common Pleas of this State can do in cases depending before them; such subpœnas and attachments to be served by the sheriff or coroner of the county.

They have power to administer oaths and affirmations to all persons brought or appearing before them, whether accountants, witnesses or otherwise.

149. How often are they required to meet?

The auditors of each county are required to assemble at the seat of justice thereof, on the first Monday of January in each year, and at such other times as they may find necessary for the performance of the duties required of them by law.

150. May appeals be had from the reports of the County Auditors?

An appeal may be had from such a report, either by the county or officer, or the Commonwealth in certain cases, to the Court of Common Pleas of the county.

151. Do the County Auditors receive any compensation for their services?

They are allowed one dollar and fifty cents each, for every day's necessary attendance upon the duties of their office.

Deputy Sarveyors.

152. Who are Deputy Surveyors?

Deputy Surveyors are appointed by the Surveyor General, one or more for each county. They have authority to locate warrants issued from the Land Office for vacant lands of the Commonwealth, to make surveys thereof, to return them to that office, and to perform other duties connected therewith.

Notaries Public.

153. What officers are notaries public?

They are officers authorized to take the proof and acknowledgment of instruments of writing in relation to commerce and navigation, such as bills of sale, bottomries, mortgages and hypothecations of ships and vessels, contracts of freight, letters of attorney, and the like. They present bills of exchange, drafts, promissory notes, and commercial and negotiable paper generally, for acceptance and payment, and protest the same for non-acceptance and non-payment; their certificates being made by law *prima facie* evidence thereof in courts of justice. Bills and notes in banks are thus protested by them. They may administer oaths and affirmations in matters relating to their duties. They keep a register of their acts; and have a notarial seal, with which all their certificates and declarations are to be authenticated. They take an oath of office, and give bonds for the performance of their duties. They receive fees of office, for particular services performed, as fixed by law.

There are, in general, three notaries public in each county; there being a greater number in the cities, and in some particular counties. They are appointed by the Governor, as provided by law, for the term of three years.

TOWNSHIPS, AND TOWNSHIP OFFICERS.

154. How are counties divided, in general, for the purposes of internal government?

Into townships.

155. How may townships be erected, or altered as to their boundaries?

The several Courts of Quarter Sessions have authority, within their respective counties, to erect new townships, to divide any township already erected, and to alter the lines of any two or more adjoining townships, so as to suit the convenience of the inhabitants thereof.

156. Are townships bodies corporate?

Yes. They are made so by Act of Assembly. They are public municipal corporations.

157. For what purposes are townships bodies corporate?

As bodies corporate they have capacity to sue and be sued; to hold real estate and personal property, for the objects authorized by law; and to make contracts for the same objects.

158. By whom are the corporate powers of townships exercised?

By the Assessors of the several townships.

Township officers.

159. What township officers are there?

Supervisors, Assessors, Township Clerk, Township Auditors, Overseers of the Poor, Justices of the Peace and Constables.

160. How are township officers appointed or elected?

They are, in general, elected by the electors of the townships respectively, at the township elections, every year.

161. Who are eligible to these offices?

No person shall be eligible to any township office unless he be an elector of the township for which he shall be chosen.

162. Are all township officers required to take an official oath?

They are required to take and subscribe an oath or affirmation to support the constitution of the United States, and that of this Commonwealth, and to perform the duties of their offices with fidelity.

163. How often may a person be required to serve in any township office?

Not more than three years in twelve.

164. Is there generally a fine imposed by law upon a person who refuses to serve, when elected to a township office?

Yes.

Township elections.

165. What officers are elected at township elections?

The township officers above mentioned; and inspectors and judges of the general election. School directors are also there elected, in townships where the general school law has been adopted. *p*

166. Where are township elections held?

At such places in the townships respectively as are designated by law.

167. At what time are township elections held?

Generally, on the third Friday of March, in every year; but in some townships a different time is fixed, by special Act of Assembly.

Township Taxes.

168. What are township taxes?

Taxes, called township rates and levies, laid and assessed by the township Supervisors, to pay for laying out and keeping in repair the public roads and bridges; and by the Overseers of the Poor, for the support of the poor; and the expenses incident thereto, in the townships respectively. There is also a school-tax, assessed by the school directors, in those townships or school districts, where the general school law has been adopted. *p*

169. On what are township taxes laid?

Upon real and personal property, offices, trades and occupations.

170. How are township taxes to be assessed and rated?

In every case in which a rate or assessment shall be laid for township purposes, it is provided by law, that the same shall be levied upon the basis of the last adjusted valuation made for the purpose of regulating county rates and levies. And in making such assessment the supervisors and overseers respectively shall take to their assistance the towship assessor for the time being.

171. What amount of taxes may the supervisors lay and assess?

An amount not exceeding one cent in the dollar of the valuation of the property taxed.

172. What amount of taxes may the Overseers of the Poor lay and assess?

An amount not exceeding one cent on the dollar of the valuation of the property taxed.

173. How are township rates and levies collected?

By a collector appointed for the purpose annually by the Supervisors and Overseers of the Poor at a joint meeting; on warrants issued to him by the Supervisors and Overseers of the Poor respectively.

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p See, further on, head "Common School System."

174. Where there shall not be in any township a treasurer elected or appointed, how are the township taxes to be collected and paid out?

In such case, it shall be the duty of the Supervisors, and Overseers of the Poor, of the township, either by themseves or by a person duly authorized by them respectively, to collect the township rates and levies by them respectively laid; and to pay out, as occasion may require, the monies received by them respectively.

175. Are there appeals allowed from township rates and assessments?

Any person aggrieved by a township rate or assessment may apply by petition to the Court of Quarter Sessions of the proper county, whose order thereon shall be conclusive.

Supervisors.

176. How are supervisors elected?

In general, there are two Supervisors elected annually by the electors of each township, to serve for one year.

177. How are vacancies in the office, by death or otherwise, filled?

By the appointment of the Court of Quarter Sessions of the proper county.

178. What are the duties of township supervisors?

In general, they are to exercise the corporate powers of the township; to act as supervisors of the public roads and highways, and to lay out, open, make and keep them in repair; and to make and repair public bridges; and they are authorized to lay a rate or assessment, as prescribed by law, for such purposes, and to defray debts and expenses incurred in the performance of these duties. There are also special duties imposed on them by Acts of Assembly.

179. Do the supervisors receive any compensation for their services?

They are allowed a dollar a day for each day they are necessarily employed in discharging the duties of their offices.

Assessors.

180. How are assessors elected?

There are elected by the electors of each township every year an Assessor, and every third year two Assistant Assessors, to serve for one year.

181. What are the duties, in general, of the Assessors?

On the precept or warrant of the County Commissioners, to take a list of all the taxable inhabitants of the township, their offices, trades, and occupations, with an account of all the taxable property therein, to make a valuation of such property, and to assess and rate thereon proportionably the amount of taxes directed by the County Commissioners for the use of the county.

182. Have they duties to perform in relation to the township rates and levies?

They are required to assist the Supervisors and Overseers of the Poor in assessing and rating the township rates and levies.

183. What is their duty in relation to taking an enumeration of the taxable inhabitants of the Commonwealth?

They are required, on the warrant or precept of the County Commissioners, every seventh year, to take a just and true account of the names and occupations of every taxable person of the age of twenty-one years, whether male or female, within their respective townships or wards. In such accounts the number of negro slaves, as also the number of deaf and dumb and the number of blind persons, in the respective townships, are to be accurately taken.

184. What pay do they receive for their services?

A dollar for every day necessarily employed in the performance of their duties.

Township Clerk.

185. How is the township clerk elected or appointed?

The electors of each township may elect a township clerk, at the township elections, to serve for one year.

186. When the electors of a township neglect to elect a town clerk, may the Court of Quarter Sessions of the county appoint one?

Yes.

187. What is the duty of a township clerk?

To act as clerk of the supervisors of the township, and to keep a minute of their proceedings; and to keep a book for the purpose of entering all matters, of which he shall be required by law to keep a record, which book shall be open to the inspection of all persons who may have occasion to search therein.

188. What is his duty particularly as to strays?

Any person taking up on his improved or enclosed lands any stray horse, cattle, or sheep, is required by law to give notice thereof to the owner if he can be found, or otherwise to deliver a particular description of such stray to the township clerk, whose duty it is to enter the same on his book.

Township Auditors.

189. How are township auditors elected?

There are three auditors for each township, one of whom is elected every year, by the electors of the township, to serve for three years.

190. What are the duties of the township auditors?

To audit, adjust and settle, every year, the accounts of the supervisors, and of such other township officers as may be referred to them.

191. What is their duty as FENCE VIEWERS?

They are required to perform the duties of fence viewers, under the Acts of Assembly for regulating and maintaining fences, and for regulating line fences.

Overseers of the Poor.

192. How are Overseers of the Poor elected?

Generally, there are two Overseers of the Poor elected by the electors of each township every year, to serve for one year. Vacancies in the office by death, or otherwise, are filled by the appointment of the Court of Quarter Sessions of the Peace of the county.

193. Have the laws of Pennsylvania always shewn a peculiar regard for the poor?

Yes; in providing for their maintenance, when destitute, under the poor laws; and in exempting articles of property necessary for their support from execution for debt.

194. What is the general system of the poor laws, in this State?

That the poor of every township shall be maintained at the expense thereof. The township in which a pauper had his "last settlement" is chargeable for his support, when that can be ascertained; if not, the township where he is found.

195. What is the duty of the Overseers of the Poor?

To provide for the support of the poor in their township; and to perform various other duties, as required by Acts of Assembly.

196. Are they authorized to lay a tax?

They are authorized, with the approbation of two Justices of the Peace of the county, to lay a rate or assessment, not exceeding one cent in the dollar at one time, upon all real and personal estates and property, taxable for county rates and levies, within their township.

197. Are the poor provided for in some of the counties at the expense of the proper county, and under a particular arrangement?

In some counties there are poor houses, erected at the expense of the county, in which all the paupers are maintained at the like expense, either out of the general county rates and levies, or by a poor tax levied and collected for the purpose; there being Directors of the Poor elected by the electors of the county, at the general election, for one or more years. These poor houses are, also, generally, houses for the employment of the poor.

198. What system is there for the support of the poor in the city of Philadelphia?

Under a special Act of Assembly, "The Guardians of the Poor of the city of Philadelphia, the district of the Northern Liberties, and the District of Southwark," have the management of the poor house, or house of employment, and levy and collect taxes for the support of the poor, and under their direction the laws in relation thereto are carried into effect, within the said city and districts.

Justices of the Peace.

199. How are Justices of the Peace appointed?

There are two or more Justices of the Peace elected at the township elections, for each township, borough and ward, and commissioned by the Governor, for five years.

As to the nature of the powers and duties of Justices and Aldermen, see those heads under the title Judiciary, Part the Third, chapt. VI.

Constables.

200. How are constables appointed?

There is, generally, one constable elected and appointed for every township, to serve for one year. Two persons are elected for the office, for every township, borough or ward, at the election thereof; of whom one is appointed by the Court of Quarter Sessions of the county; the court to give, in all cases, a preference to the person highest on the return of the election, if he be duly qualified, or offers to give security as required.

It is required that, in order to be appointed constable, a person shall possess a freehold estate, of the clear value of one thousand dollars, or give security in the requisite sum, for the faithful discharge of his duties.

In some townships, boroughs and wards, there are more than one constable appointed for each of them, by special Acts of Assembly; the election and appointment to be made as above stated.

No deputy can be appointed by a constable, either by general or special deputation, without the approbation of the Court of Quarter Sessions of the proper county; except the same be made specially, in some civil suit or proceeding, at the request and risk of the plaintiff.

Vacancies in the office are filled by the appointment of the Court of Quarter Sessions of the proper county.

As to the nature of their powers and duties, see title Judiciary, and head Constables, Part the Third, chapt. VI.

CITIES AND OFFICERS THEREOF.

201. What are cities?

Large towns, the inhabitants of which have been incorporated, by Act of Assembly, as cities, with power to make by-laws and ordinances, for their government in relation to certain local matters, and not inconsistent with the constitution and laws of the State; to appoint officers under them, and to levy and collect taxes for those purposes.

202. What officers are there, in general, of a city, under its Act of incorporation?

A Mayor, *q* members of the city council, treasurer, high constable and assistant constables.

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q See head Mayor, above, p. 164.

203. Are the cities, by law, parts of the counties, respectively, in which they are situated?

Yes, unless it is otherwise specially provided by Act of Assembly.

204. Do the general laws of the State operate within the cities?

Yes; except where it is otherwise provided by special Act of Assembly.

205. What are the officers within the cities under the general laws of the State?

The judges and other officers of the courts of justice; and the several county officers, as sheriffs, coroners, registers, recorders, county commissioners, county treasurer, and county auditors; and in the wards respectively, assessors, collectors of taxes, aldermen, and constables.

BOROUGHS AND OFFICERS THEREOF.

206. What are boroughs?

Incorporated towns, the inhabitants of which are authorized by their act or charter of incorporation to make and enforce by-laws or ordinances for the regulation of certain local matters, to elect or appoint borough officers, and to levy and collect taxes for such purposes.

207. What officers, in general, are there in a borough under its charter or act of incorporation?

A chief burgess, assistant burgess, members of town council, treasurer, town clerk, and high constable and his assistants.

208. How may towns become incorporated as boroughs?

By special act of Assembly, or by the Courts of Quarter Sessions of the Peace of the counties respectively in the manner prescribed by the general law on the subject.

209. Are boroughs parts of the townships respectively in which they are situated?

Yes; except where it is otherwise especially provided by law.

210. Do the general laws of the State operate within the boroughs?

The laws of the State operate within them as in other parts of the township or county.

211. What officers under the general law of the State are there within a borough?

An assessor and assistant assessors, collector of taxes, Justices of the Peace, and constables, within the borough or each ward thereof.

CHAPTER VIII.

OF ELECTIONS, IN GENERAL.

1. What is the provision in the Constitution as to elections generally?

"Elections shall be free and equal." *Cons. of Pa. Art.* IX. *sect.* V.

2. What does the Constitution provide as to the manner of voting at elections?

"All elections shall be by ballot, except those by persons in their representative capacities, who shall vote *viva voce*." *Cons. of Pa. Art.* III. *sect.* II.

In elections by the Legislature, the members vote, "in their representative capacities," viva voce, by word of mouth.

Qualifications of electors.

3. Who have a right to vote at elections?

"In elections by the citizens, every white freeman of the age of twenty-one years, having resided in this State one year, and in the election district where he offers to vote ten days immediately preceding such election, and within two years paid a State or county tax, which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector. But a citizen of the United States who had been previously a qualified voter of this State, and removed therefrom and returned, and who shall have resided in the election district, and paid taxes, as aforesaid, shall be entitled to vote, after residing in the State six months: Provided, That white freemen, citizens of the United States, between the ages of twenty-one and twenty-two years, and having resided in the State one year, and in the election district ten days as aforesaid, shall be entitled to vote, although they shall not have paid taxes." *Cons. of Pa. Art.* III. *sect.* I.

Privilege of electors.

4. Are electors privileged from arrest, while attending elections?

By the Constitution, "Electors shall in all cases, except treason, felony, and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning from the same." *Cons. of Pa. Art.* III. *sect.* III.

Different kinds of elections.

5. How may elections, in general, be classed?

There are, the general election; township, borough or ward elections; special elections; and the election, every four years, for electors of President and Vice President of the United States.

Officers of elections.

6. By what officers are all these elections conducted?

By judges and inspectors previously elected by the people at the township, borough or ward elections, and by clerks appointed by those officers. There are two inspectors and one judge elected for each township, borough, ward or district; and a clerk is appointed by each inspector. At the township or ward elections each elector votes for one inspector; and the two persons having the greatest number of votes are the inspectors.

These inspectors, judges and clerks conduct all the general, special, township or ward, and Presidential elections, to be held during the year.

No person can be an officer of an election, who is not a qualified voter of the district.

No person holding an office under the general or State government, except a militia or borough officer, can be an officer or clerk at any general or special election.

Election officers are bound by special oath or affirmation to discharge their duties with fidelity; and severe penalties are imposed by law upon them for neglect of duty, bribery, fraud, unfair practices or misbehaviour.

No officer or clerk of any election is eligible to any office at such election; except to a township office.

The election officers receive a dollar and fifty cents a day for their services, to be be paid by the county.

Mode and place of voting.

7. What is voting by *ballot?*

Voting in such a manner that it is not known for whom the particular elector votes.

8. How are votes given in this State?

By written or printed votes or tickets, containing the names of the persons voted for, a separate ticket for each office, folded so as to conceal the names; the tickets of all the voters being put together indiscriminately in suitable boxes, and not opened until the election is closed.

9. At what place of election can an elector vote?

Only at the place of election in the township, borough, ward or district, in which he resides; at any election.

Manner of conducting elections.

10. How are the elections, in general, conducted?

The polls are opened on the day of election, at the hour fixed by law, by the officers and clerks of the election being assembled at the proper place in the election district, with the necessary *ballot boxes*, and papers, for the purpose of receiving votes; having previously taken and subscribed the requisite oaths or affirmations. Each voter offers his ticket or tickets personally to one of the inspectors. The

inspectors and judge have a right to require the prescribed proof of his qualifications; the judge to decide thereon. The voter's ticket or tickets, if his right to vote is admitted, is or are received by one of the inspectors, and by him deposited in the proper box or boxes. The name of each voter is called out aloud by the inspector, by him marked on the list of taxables of the district furnished by the County Commissioners, and also entered by each of the clerks on a list of voters to be kept by him. There is a ballot box for each office voted for. The tickets voted are all thus deposited and kept together indiscriminately in the proper box or boxes, and not opened or inspected until after the polls are closed at the hour appointed by law. When the polls are closed, the boxes are then opened separately, and the inspectors take out the tickets, one by one, in the presence of the judge, and read aloud the names thereon, an account of which, as thus read out, is entered by each of the clerks on *tally papers*. The number of votes given for each candidate is then cast up; the judge publicly declares the number of votes given for each person, and for what office; and a certificate thereof is made out by the inspectors and judge, under their hands and seals. At every election, immediately after these proceedings, the tickets voted, the list of taxables, and one of the tally papers, and one copy of the oaths and affirmations of the officers, are sealed up in a box or boxes, and delivered by one of the inspectors to a Justice of the Peace for safe keeping; and the other duplicates of those papers are inclosed and sealed, and directed or delivered to the proper officer, according to the nature of the election, as directed by law.

This is the mode of proceeding, in general, at any of the above mentioned kinds of election, as to an election held only by the citizens of one township, ward or district, or as to the votes given only by them at a general election. The certificates of the election, or of their votes, are to be returned or used, according to the nature of the election, as directed by law. See the other heads in this chapter.

Plurality of votes.

In all these elections by the citizens, the election of the candidate or candidates is determined by a plurality, not a majority of the votes; that is, the person having the highest number of all the votes given is elected.

General elections.

11. What is the general election?

The election for State and county officers; which is held at the same time, the second Tuesday of October, every year, in the different election districts throughout the State.

12. At what places is the general election held?

Election districts are established by law, consisting of a township or townships, borough or ward, or parts thereof, and a place is fixed for holding the general election therein.

13. What notice is given of the general election?

It is the duty of the sheriff of every county to give notice by public advertisement of the time and places of holding the general election therein, and of the officers to be elected.

14. How is the general election conducted, in the different districts?

Every general election is to be opened between the hours of eight and ten in the forenoon, and continued without interruption or adjournment until seven o'clock in the evening, when the polls are to be closed; except in the cities of Philadelphia and Lancaster, and in some particular districts, where the polls are not to be closed until a later hour in the day.

The election is to be held in each district of every county, by the inspectors and judge of elections, in the same manner as is above stated with regard to elections generally, until the election is closed, and the certificate of the votes given is made out. The judge of the township, ward or district then takes charge of the certificate, and produces the same at a meeting of one judge from each district of the county, at the court house, on the third day after the day of the election. This is called the meeting of the *return judges* of the connty.

When the voters of more than one township, ward or district, hold their election at the same place, besides the certificate made out by the election officers of each township, ward or district, of the number of votes given therein, there is, also, a certificate made out by all the judges together of the whole number of votes given at such place of election, to be produced by one of those judges at the meeting of the return judges of the county. At the meeting of the return judges so held. and being organized as a Board, with one of them as President, and having two clerks, all the votes given in the county, according to those certificates, are to be added together, with respect to each officer voted for; and duplicate certified statements thereof are to be made, signed by all the return judges, and attested by the clerks of the meeting. These certified statements are called *election returns.* Of the duplicate returns, one is to be deposited with the prothonotary of the county, to be filed in his office, and the other inclosed under seal, and directed to certain officers designated by law. There are, also, certificates of election furnished by the return judges to the persons elected, as to some offices; aud as to others, notice of their election is given by the prothonotary.

Such is the mode of proceding at a general election in a county in reference to officers whom the electors of the county are entitled to choose for themselves, unconnected with any other county. Where two or more counties compose a district for the choice of one or more Representatives in Congress, or Senators or Representatives in the State Legislature, the election returns for each county are first made out, in the manner above stated; and one of the return judges

of each county takes charge of a certificate of the number of votes given in that county for any officer to be thus chosen, and produces the same at a meeting of a judge from each county of such district, to be held at a time and place fixed by law, by whom returns for the whole district is to be made out.

Township, borough or ward elections.

15. What are township, borough or ward elections?

Elections held in the respective townships, boroughs or wards, for officers thereof, such as assessors, supervisors, overseers of the poor, justices of the peace, constables, township treasurer, town clerk, and township auditors. Inspectors and judges of elections are, also, elected at these elections.

16. When are these elections held?

In general, at the same time, the third Friday in March, in every year, throughout the State; but as to some townships, a different time is fixed, by special Acts of Assembly. Notice of every such election is given by the constable of the township, or in case of his neglect or absence or death by the supervisor.

There are elections, also, in the cities and boroughs for officers under their charters or acts of incorporation.

Special elections.

17. What elections are these?

Elections to supply vacancies in offices, held at some other time than the day of the general election. Such an election is held to fill a vacancy in the case of a member of the State Legislature, or a Representative in Congress.

Electors of President and Vice President. [a]

18. How are electors of President and Vice President of the United States chosen in Pennsylvania?

By the qualified citizens of the State, at elections held at the places of the general election in the several townships, wards or districts. The election is held on the Tuesday next following the first Monday in November, every fourth year, by general ticket, throughout the State; as provided by Act of Congress, of 1845.

19. At what time and place do the electors assemble to give their votes for President and Vice President?

On the first Wednesday in December after their election, at the seat of government of the State.

20. How is a vacancy among the electors to be filled?

In case of a vacancy among them at the time of assembling, by death, or failure to attend from any cause, a person to fill the vacancy is chosen by the electors present.

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a See Part the First, chap. vii, p. 89, 90.

Contested elections.

21. How are contested elections determined?

The legality of the election of any officer may be contested, and an inquiry had thereon, on the application of the citizens, in the manner directed by law. Contested elections of Representatives in Congress are decided by the House of Representatives of the United States; of members of the Legislature by the Senate or House of Representatives respectively; of State officers by the Legislature; and of county and township officers, by the Courts of Quarter Sessions of the counties respectively.

CHAPTER IX.

COMMON SCHOOL SYSTEM.

1. What are the provisions of the constitution of the State in relation to education?

"The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." *Cons. of Pa. Art.* VII. *sect.* I.

"The arts and sciences shall be promoted in one or more seminaries of learning." *Cons. of Pa. Art.* VII. *sect.* II.

The old system of educating the poor gratis.

2. What was the mode of educating the children of the poor, as provided by the Acts of Assembly passed before the present general system of education?

The assessors of the several townships, wards and districts, were required annually, by the precepts of the county commissioners, to receive from the parents the names of all the children residing therein, between the ages of five and twelve years, whose parents were unable to pay for their schooling, and to return lists of the names to the county commissioners; the county commissioners were authorized to make alterations or additions to the lists; and the assessors were then required to inform the parents of the children whose names were on the corrected lists that they were at liberty to send them to the most convenient school free of expense; the teachers were to keep an account of the number of days each child so entitled should be taught, and the amount of stationary furnished for the use of such child, an account of which was to be rendered by the teacher to the county commissioners, and if approved by them, to be paid by their order on the county treasurer for the amount thereof.

3. Are these acts now in force in any parts of the State?

No; but there is a mode provided by law, by which the children of parents who are unable to pay for their tuition, in districts where the common school system has not been accepted by the taxable inhabitants, shall be taught gratuitously by the direction of the School Directors of the district, and the expense thereof be borne by a school tax assessed by them in the district. See Non-accepting Districts, further on, page 281.

Common School Funds.

4. What is the Common School Fund in this State?

By the Act of Assembly of the 2d of April 1831, there was "established a fund to be denominated a Common School Fund, of which the Secretary of the Commonwealth, the Auditor General, and the Secretary of the Land Office, are to be the commissioners;" to which were assigned all monies due the Commonwealth on unpatented lands, or for lands, or that may be paid to the commonwealth on any warrant or patent for land, all fees received in the land office, and the proceeds of certain State taxes; the State Treasurer to report annually the amount of money received by him from the above mentioned sources to the said commissioners, with a certificate of the amount thereof, and that the same is held by the Commonwealth for the use of the Common School Fund, at an interest of five *per cent.* per annum; the amount of the monies belonging to the said fund to be added to the principal as it becomes due, and the whole amount thereof to be held by the Commonwealth until the interest thereof amounts to the sum of one hundred thousand dollars annually, after which the interest shall be annually applied to the support of common schools throughout the Commonwealth, in such manner as shall be directed by law.

By an Act of Assembly of 1834, a plan was enacted for commencing common schools in the State; by which school divisions and districts were established throughout the State, and it was provided that the schools should be supported by such an amount of tax in each division or district, if any, as the citizens thereof should determine, and by an annual State appropriation, to be apportioned among the several divisions or counties and districts, which adopted the system, according to the number of taxable inhabitants therein respectively. Under that Act there was an annual appropriation of seventy five thousand dollars paid out of the common school fund, in the year 1835 and 1836, for these purposes. The system was first in operation in the year 1835.

By an Act of Assembly of 1836, there was a State appropriation made, for the support of common schools, of two hundred thousand dollars, out of the general means of the treasury, for the year 1837, to be apportioned among those school districts, according to the number of their taxable inhabitants respectively, which should be entitled to the same by adopting the system and levying a school tax not less than equal to, nor more than treble, their portion of the appropriation

under the act. In 1838 the State appropriation, out of the general means of the treasury, was five hundred thousand dollars, to be expended in building school houses or in paying for tuition.

By an Act of 1838, it was provided that the State appropriation for common schools should be annually, after that year, a sum equal to one dollar for every taxable inhabitant in the Commonwealth, out of the general means of the treasury, to be apportioned among the several districts, which should be entitled to the same by having adopted the system and levied a tax as under the Act of 1836. The State appropriations have been according to these two last mentioned Acts of Assembly until the year 1843.

There was a State appropriation for Common Schools, out of the general means of the treasury, for the (school) year 1844, two hundred and fifty thousand dollars; for the year 1845, two hundred thousand dollars; and for the year 1846, two hundred thousand dollars; to be apportioned among the several districts, according to the number of their taxable inhabitants, which should levy a school tax therein as above mentioned.

In the annual report of the Superintendent of Common Schools, it is stated that in the (school) year 1844 the State appropriation paid to the accepting districts, exclusive of that of Philadelphia city and county, amounted to $264,520; and the school tax levied in the several districts, to $391,340; making the whole amount set apart for school purposes $655,860. And in the report the whole actual expenditure, in those accepting districts, during that year, for school purposes, is estimated to have been about $600,000.

Besides the appropriations made, as above mentioned, for the purposes of education by common schools, there have been large annual appropriations paid by the State in aid of colleges and academies, for a number of years past, until the present year. *a*

Superintendent of Common Schools.

5. Who is the superintendent of Common Schools?

The Secretary of the Commonwealth.

6. What are his duties, in general?

To prepare blank forms, with proper instructions, for making district reports, and for conducting proceedings under the system; to give to the several boards of school directors such information as he may deem necessary for the improvement of the schools; to submit to the Legislature an annual report of the common schools throughout the commonwealth, of the estimates and expenditures, together with plans of improvement, and such matters in relation to common schools as he may deem it expedient to communicate; to sign all orders on the State Treasurer for the payment of money to the treasurers of the several school districts: to transmit to the county commissioners of each county, annually, in the month of February, a statement of the amount which every school district in the county may be entitled to receive out of the annual State appropriation for common schools,

a See the last head in this chapter.

to be published by the said county commissioners according to law. He is authorized to settle controversies among the directors of any district, or adjoining districts, concerning the duties of their office, the distribution of the State appropriation, or the levying and collecting of taxes.

7. Does he receive a salary for his services?

He receives a salary of five hundred dollars per annum, payable by the State.

School districts.

8. What is a school district?

By law, every township, borough, and ward within the Commonwealth, (except in the city and county of Philadelphia) shall constitute a school district. In a few instances, there are townships divided, by special Act of Assembly, into several districts.

In each district there is a board of directors, and a treasurer thereof. Each school district is thus separately organized, for its peculiar purposes; being independent of, and having no connection with county, or township officers.

The directors of a district are authorized, if they deem it expedient, to divide the district into sub-districts, the citizens of each of which may elect a committee of three persons, to attend to its local affairs, subject to the orders of the board of directors.

The whole number of school districts in the State, at the close of the year 1844, was eleven hundred and seventy.

Philadelphia city and county form one district, called the first district; which is not subject to the general school laws, but has a peculiar system provided for by special Acts of Assembly.

The number of districts that received their portion of the State appropriation, having adopted the common school system and levied a tax under it, was in the year 1844 nine hundred and thirty-nine.

The number of schools reported as being in operation within the year 1844, was five thousand nine hundred and ninety-three; there being schools that were not regularly reported to the Superintendent. The whole number of scholars in that year, as reported, was two hundred and eight thousand four hundred and two.

9. Is the common school system in operation in all the school districts of the Commonwealth?

By the Acts of Assembly it is provided, that it should be in operation, and appropriations under it be made, only to those school districts the qualified voters of which should agree thereto, and adopt the same, in the manner directed by law; and some districts in the State have not adopted it.

10. How are the school districts classed in reference to their adoption of the common school system?

Into accepting, and non-accepting districts.

11. May the common school system be discontinued or rejected in an accepting district?

Yes; it may be discontinued in any district, "by a clear majority of the votes polled at a triennial meeting of the taxable citizens of the district," to be held in the manner directed by law.

School directors.

12. How many school directors are there for each district?

There are six school directors for each district; two of whom are elected annually to serve for three years, by the qualified voters of the district.

13. How is each board of school directors organized?

By choosing a president and secretary, out of their own number; and they are required to appoint a treasurer of the district.

14. How are vacancies in any board of school directors to be filled?

The board of school directors has power to fill any vacancy that may occur by death, resignation, or otherwise, until the next election.

15. What are the duties, in general, of the school directors of any accepting district?

1. To establish a sufficient number of common schools for the education of every individual above the age of four years, in the district, who may apply, either in person or by his or her parents, guardian or next friend, for admission and instruction; to keep the said schools open at least six months in every year, if they shall have funds for that purpose. 2. To cause suitable buildings to be erected, rented, or hired, for schools, and to supply the schools with fuel. 3. To exercise a general supervision over the schools of their respective districts, and fix the amount of the salaries of the teachers. 4. To pay all necessary expenses of the schools, by orders drawn on the district treasurer, signed by the president and countersigned by the secretary of the board. 5. To visit, by one or more of their number, every school within their district, at least once in every month, and to cause the result of such visit to be entered on the minutes of their board. 6. To make an annual report to the superintendent of common schools, setting out the number of scholars, the condition of the schools, the character of the teachers, the branches of study taught, the expenditures, and other particulars as directed by law.

In boroughs and wards, the directors of a district may appoint an inspector, for the "visitation, inspection and care of the schools" in it.

16. What are the duties, in general, of the school directors of non-accepting dirtricts?

To cause returns to be made to them, by the assessors, every year, of the names of the children in the district, whose parents are unable to pay for their tuition, to provide for the education of such children, and to lay a school tax on the taxable persons and property within the district to defray the expense thereof. See further on, the head

"Non-accepting districts." They are also required to call, annually, a meeting of the qualified citizens of the district, in order to determine by their votes whether they will accept or not the common school system. See the head "Non-accepting districts."

17. Have the school directors of every accepting district power to purchase and hold real and personal property, which may be necessary for the establishment and support of schools, and to sell the same when it shall no longer be required for such purposes?

Yes.

18. Do the school directors receive pay for their services?

No. Neither the directors, treasurer, or school committee, receive any pay or emolument.

19. What privileges do the law give them?

They are, by law, exempt, during the time they perform the duties of their offices, from the performance of military duty, and from serving in any township or borough office.

School tax.

20. Have the school directors of every accepting district power to assess a school tax?

The school directors of every accepting district are required by law to cause to be levied, annually, such an amount of tax on the district as they may think necessary for school purposes, not less than equal to, nor more than treble the amount which the district is entitled to receive out of the annual State appropriation, or, as the law has been construed, of its portion in the appropriation of 1837; it being necessary, in order to raise any additional sum, that it should be decided how much and what additional sum should be so raised, by the votes of a majority of the taxable inhabitants of the district, at a meeting to be held as directed by law.

21. How is a school tax to be assessed?

The school directors of each district are required to assess the amount of the tax on the property and objects taxable for county rates and levies, and on certain property taxable for State purposes, within the district, on the basis of the last adjusted valuation of the same, made by the assessors for such purposes, a corrected copy of which is to be furnished to them by the county commissioners.

22. How is the school tax to be collected?

By the township or borough collector, or some suitable person appointed by the board of school directors, on their warrant.

23. Can the school directors in non-accepting districts lay a school tax?

The school directors of every non-accepting district are required by law, to cause to be assessed a school tax on the district for the purpose of defraying the expense of the education of the children of the poor within the district. See head "*Non-accepting districts.*"

Treasurer of school district.

24. How is the treasurer of a school district to be appointed?

By the board of school directors, every year.

25. What is his duty?

The district treasurer shall receive all moneys belonging to the district, whether the same be derived from appropriations by the State, district taxes, private donations, or otherwise, and shall pay out the same, on orders drawn by the president and attested by the secretary of the board of directors, and his accounts shall be audited and adjusted as the accounts of townships and boroughs are directed by law to be audited and adjusted.

26. Does he receive any pay?

No; he is, however, exempted by law from being compelled to serve in any township or borough office, or from the performance of military duty.

Teachers.

27. How are teachers to be appointed?

By the board of school directors.

28. Is it required that the teachers be examined as to their qualifications?

It is directed by law that no person shall be employed as a teacher, who has not been examined by the school directors of the proper district, and received from a majority of them a certificate of his being of a good moral character and duly qualified; which certificate is to be renewed annually.

Non-accepting districts.

29. May the common school system be adopted in any district, by the citizens thereof, where it has not been before accepted?

The school directors in every non-accepting district are required to call, annually, a meeting of the qualified citizens thereof, in the manner directed by law, at which their votes are to be taken for "schools," or "no schools;" and if a majority of the votes are in favor of "schools," the directors shall proceed to establish schools in the district, under the common school system, and the district is to be considered an accepting district.

30. May the common school system be discontinued in any accepting district, by the citizens thereof?

Yes; "by a clear majority of the votes polled at a triennial meeting of the taxable citizens of the proper district," to be held as directed by law.

31. What provision is there by law for the tuition of the poor gratis in non-accepting districts?

It is the duty of the school directors of every non-accepting district, every year, to issue their precept to the township assessors within

their district, requiring them to receive from the parents the names of all the children between the ages of from five to fourteen years, who reside therein, and whose parents are unable to pay for their tuition; which names are to be returned to the directors, who shall be authorized to make alterations and additions thereto, and thereupon to make an estimate of the sum required to educate the said children for the current year, and to proceed to levy and apportion the said sum upon the persons and property, within the district, taxable for county rates and levies, on the basis of the last adjusted valuation of the same made by the assessor, and to issue their warrant to the township supervisors who shall be obliged to collect the same in the same manner as road taxes are collected; the school directors are then to send the names of the children to the teachers in the district, whose accounts for teaching them are to be paid by the said directors.

32. What provision has been made by law in regard to undrawn balances of the annual State appropriations to the common school districts?

By Acts of Assembly, passed from time to time, it has been provided that these undrawn balances shall remain and accumulate in the treasury of the Commonwealth for the use of such districts as shall be entitled thereto, by adopting the common school system, or otherwise. By an Act of Assembly of 1844, it was enacted that no payments should be made out of the State Treasury on account of such undrawn balances.

Colleges and Academies.

33. What appropriations are annually paid by the State to universities, colleges, academies and seminaries?

By an Act of Assembly of 1838, it was provided that there should be annually paid, by the State, to each university and college, maintaining at least four professors, and instructing constantly at least one hundred students, one thousand dollars; and to each classical academy and female seminary, incorporated by the Legislature, certain sums, of from three hundred to five hundred dollars, in proportion to the number of their teachers and pupils respectively.

On the 29th of September 1843, the Act of Assembly referred to was repealed, and a special appropriation by the Legislature was made to those objects, for the current year. In 1844 and 1845, there were no such appropriations made.

34. Is every university, college, academy or school, receiving aid from the Commonwealth, required by law to make an annual report to the superintendent of common schools.

Every such institution is required to make a report annually to the superintendent of common schools of the number of its students, the course of studies pursued therein, its permanent revenue, its expenses, and its general condition.

CHAPTER X.

MILITIA.

1. Was the general government established in order to "provide for the common defence?"

Yes. *Cons. of U. S. Preamble.*

2. What is the principle of the government in relation to the obligation of its citizens to perform military service?

That every freeman is under obligation to perform military service for its defence.

3. What is the provision of the federal constitution as to raising a military force?

"Congress shall have power;—to declare war;—to raise and support armies;—to provide and maintain a navy." *Cons. of U. S. Art.* I. *sect.* VIII. 11, 12, 13.

4. Is the United States government bound to protect every State?

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence." *Cons. of U. S. Art.* IV. *sect.* IV.

5. What is the provision of the federal constitution in relation to the militia?

"A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." *Cons. of U. S. Amendments Art.* II.

6. — As to calling forth the militia?

"Congress shall have power; to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions." *Cons. of U. S. Art.* I. *sect.* VIII, 15. See title Congress, page 63.

7. — As to organizing, disciplining and arming the militia?

"Congress shall have power;—to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the rules prescribed by Congress." *Cons. of U. S. Art.* I. *sect.* VIII, 16. See title Congress, head Militia, page 63.

8. What is the power of the President of the United States as to the militia?

"The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States." *Cons. of U. S. Art.* II. *sect.* II. 1.

9. Can any State declare or engage in war?

"No State shall, without the consent of Congress, engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." *Cons. of U. S. Art.* I. *sect.* X. 2.

10. What restriction is there upon the several States as to their keeping troops or ships of war, by the federal constitution?

"No State shall, without the consent of Congress, keep troops or ships of war in time of peace." *Cons. of U. S. Art.* I. *sect.* X, 2.

11. What is the militia?

The body of the freemen of the State, enrolled for military service, and liable to be called to its performance, according to the laws.

12. What is contained in the Declaration of Rights of this State, as to the right of the citizens to bear arms?

"The right of citizens to bear arms, in defence of themselves and the State, shall not be questioned." *Cons. of Pa. Art.* IX. *sect.* XXI.

13. — As to the keeping up of a standing army in the State?

"No standing army shall, in time of peace, be kept up, without the consent of the Legislature." *Cons. of Pa. Art.* IX. *sect.* XXII.

14. — As to the military being subject to the civil power?

"The military shall, in all cases, and at all times, be in strict subordination to the civil power." *Cons. of Pa. Art.* IX. *sect.* XXII.

15. — As to the quartering of soldiers in private houses?

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." *Cons. of Pa. Art.* IX. *sect.* XXIII.

16. What is the provision of the constitution of the State as to arming, organizing and disciplining the freemen of the Commonwealth for its defence?

"The freemen of this Commonwealth shall be armed, organized and disciplined for its defence, when and in such manner as may be directed by law." *Cons. of Pa. Art.* VI. *sect.* II.

17. — As to those who conscientiously scruple to bear arms?

"Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service." *Cons. of Pa. Art.* VI. *sect.* II.

18. Who are liable to be enrolled in the militia of this Commonwealth?

In general every free able bodied white male person who has resided

within this Commonwealth for one month, and is of the age of between eighteen and forty-five years.

19. Who are exempted, by law, from militia duty?

The Vice President of the United States, the judicial and executive officers of the United States, members of Congress, post masters, custom house officers, stage drivers conveying the mail of the United States, ferrymen employed on any post road, inspectors of exports, pilots and mariners actually employed in the sea service and ministers of religion, under the general militia law, *a* and other persons, as provided by special Acts of Assembly.

20. Who are called "volunteers," under the militia law?

Persons who voluntarily associate in companies and troops, and uniform and equip themselves, to be armed, disciplined, and subject to military duty, as prescribed by law.

21. How are the militia and volunteers of the State divided and organized?

Into divisions, consisting of one or more counties; each division, into two or more brigades; and each brigade, into two or more regiments; each regiment, into two battalions, and into eight or more companies.

22. What power has the Governor as to the military force of the State?

He is commander-in-chief of the army and navy of the commonwealth, and of the militia, except when in the service of the United States. *Cons. of Pa. Art.* II. *sect.* VII.

23. Is there an Adjutant General of the militia of the Commonwealth?

Yes. He is appointed by the Governor for three years; but may be removed by him, at any time, for failure or neglect of duty. He receives a salary, from the State. It is his duty, in general, to receive and distribute all orders from the Governor, to the several officers of the militia; to receive and file all returns made to him of the militia, agreeably to law, and to make annually a detailed report to the Legislature of the number, organization, and condition of the militia, and volunteers; to procure arms, military stores, cloathing, accoutrements, and camp equipage, and to distribute the same to the several officers, according to law.

24. What officers of a division are there?

One major general, and two aids-de-camp; one division inspector, and one division quarter master.

25. — Of a brigade?

One brigadier general, one aid-de-camp, one brigade major, one brigade quarter master, and one brigade inspector.

a By Act of Assembly of 25th, April 1844.

26. — Of a regiment?

One colonel, one lieutenant colonel, and two majors; one surgeon, and two surgeon's mates; one adjutant, one quarter master, one quarter master sergeant, one sergeant major. one drum major, and one fife major.

27. — Of a company?

One captain, one first lieutenant, one second lieutenant, five sergeants, six corporals, and two musicians.

28. How may battalions and regiments of volunteers be organized?

Volunteer troops or companies may associate and be formed into battalions and regiments, in the manner directed by law.

29. Of what description of force may volunteer companies or troops be?

Artillery, infantry, cavalry or riflemen.

30. What does the law provide, at the present time, as to the times of the parading and training of the militia?

That the militia shall be paraded in companies, and battalions or regiments, on the first and second Mondays, respectively, of May in every year.

31. Is there a fine upon every militia man for not attending on the days of parade and training appointed by law?

Yes; upon every officer and private, enrolled in the militia, between the ages of twenty-one and forty-five years.

32. How often are volunteer companies and troops required, by law, to meet for training?

At least three times in every year.

33. Are volunteer companies and troops required to meet for training with the militia regiments or battallions, at their annual trainings appointed by law?

Yes; except where they belong to volunteer battalions or regiments, or it is otherwise provided by special Act of Assembly.

34. Are the militia and volunteers governed by certain articles, rules and regulations fixed by law?

Yes.

35. Are the officers and privates in the militia and volunteers liable to be punished for misconduct and disobedience of orders whilst on parade, by courts martial?

Yes.

36. Is there a set of rules of discipline and tactics established by Congress for the militia?

Yes.

37. How are arms provided, to be used by the militia?

The general government, under the Acts of Congress, furnishes arms and accoutrements to the several States, under the Acts of Con-

gress, according to the number of the enrolled militia in each State, for the use of the militia. The general government has armories for the manufacture of arms. The arms thus furnished, and other military stores and implements belonging to the State, are kept in the State arsenals.

38. Is the militia in this State supplied, by law, with arms for training and disciplining?

Volunteer troops and companies are so supplied, but no other part of the militia.

39. How may the militia be called into actual service?

By the President of the United States, as authorized by the federal constitution, and in the manner directed by act of Congress; it is generally by demands made on the Governors of the States severally: Or, by the Governor of the State, in the cases provided for by law.

40. In what cases may the Governor of the State call the militia or volunteers into actual service?

By Act of Assembly, he is authorized to do so in case of rebellion, or threatened invasion of this or any neighboring State; but no part of the militia shall be detained in service, at any one time, longer than three months, under the mere requisition of the Governor, without the direction or assent of the President of the United States.

41. When any portion of the militia of this State is required for the service of the State, or of the United States, how is it to be detached for that purpose?

It may be detached from any particular brigade or brigades, as ordered by the Governor; and the enrolled militia in each company thereof are classed and drafted, for the tour of duty, in the manner directed by the Act of Assembly. Troops of cavalry, and companies of artillery, infantry and riflemen, shall be detached at the discretion of the Governor.

42. Who are liable to be called upon as militia men to perform military duty in actual service?

All persons who are enrolled in the militia.

And every officer and private of the militia, who shall neglect or refuse to serve, when called into the actual service of the State, or of the United States, is liable to be fined and punished; by the sentence of a court martial, either under the Acts of Congress, or the laws of the State.

43. Is a militia man allowed to find a substitute for the performance of a tour of duty in actual service?

Yes.

44. Is the militia called into the service of the United States armed and equipped at the expense of the State, during the service?

Yes.

45. Do the militia receive pay when called into actual service either of the United States, or of this State, for the time they are in service?

The officers and privates of the militia receive the like pay, rations and emoluments, as are allowed by the United States to those of the regular army at the time they shall be in the service.

46. Are the militia and volunteers of the State, while in the actual service of the State, or of the United States, to be subject to the rules and regulations established for the army of the United States?

Yes.

The President of the United States is the commander-in-chief of the militia of the several States, when in the service of the United States.

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